

IN THE
Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1820

PAUL PHILBROOK,

Appellant

—v.—

JEAN GLODGETT, ET AL.

No. 74-132

**CASPAR W. WEINBERGER, SECRETARY OF
HEALTH, EDUCATION AND WELFARE,**

Appellant

—v.—

JEAN GLODGETT, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

INDEX OF APPENDIX

	Page
In the United States District Court for the District of Vermont:	
Docket Entries	1
Complaint	7
Answer of Defendant Betit	13
Answer of Defendant Richardson	17
Motions of Defendant Richardson for Judgment on the Pleadings, Summary Judgment, or for Dismissal for Lack of Jurisdiction	19

II

INDEX OF APPENDIX

	Page
In the United States District Court for the District of Vermont—Continued	
Appendix A to Memorandum of Law in Support of Motions of Defendant Richardson	22
Appendix B to Memorandum of Law in Support of Motions of Defendant Richardson	25
Plaintiffs' Interrogatories to Bert Smith	29
Plaintiffs' Memorandum Concerning Average Monthly Payments Under AFDC-UF and Unemployment Insurance	31
Derosias' Motion to Intervene	59
Stipulation of Facts	60
Defendant Smith's Answer to Interrogatories	63
Derosias' Complaint	67
Letter from Honorable James L. Oakes to Counsel	72
Plaintiff Derosias' Motion for Leave to File Amended Complaint	74
Order Granting Leave to Amend Complaint	75
Spicers' Motion to Intervene	76
Plaintiffs' Motion for Rehearing on Dismissal of Class Action	77
Defendant Philbrook's Motion for a New Trial	78
Sarazins' Motion to Intervene and for Temporary Relief..	79
Affidavit of William Sarazin	81
Sarazins' Amended Complaint of Intervention	83
Stipulation re Sarazins' Intervention	89
Order Granting Sarazins' Leave to Intervene	91
Defendant Philbrook's Motion for a Stay	93
Affidavit of Robert M. Saliba	94
Affidavit of Lawrence Masterson	97
Affidavit of Paul R. Philbrook	101
Order Staying Judgment	103
In the Supreme Court of the United States:	
Order Noting Probable Jurisdiction in No. 73-1820	105
Order Postponing Further Consideration of Jurisdiction in No. 74-132, and Consolidating Cases	106

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 6550

DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1972	
Mar. 6	Filed Complaint.
Mar. 6	Issued Summons and delivered same to Marshal for service.
Mar. 8	Filed Summons returned served.
Mar. 29	Filed Stipulation for a 20 day extension of time for Defendant Joseph Betit during which he is required to file an Answer of Plaintiffs' Complaint. Mailed copy to attorneys.
Apr. 17	Filed Answer to Defendant Betit and Certificate of Service.
May 10	Filed Stipulation re Answer and Approval thereon.
June 15	Filed Answer of Defendant Elliot Richardson and Certificate of Service.
July 11	At the Call of the Calendar before Judge Coffrin, it was Ordered that this case be passed.
Aug. 16	Filed Motion for Judgment on the Pleadings, Motion for Summary Judgment, Motion to Dismiss for lack of Judgment and Memorandum of Law in support of Motions of Defendant Richardson and Certificate of Service.
Aug. 30	Filed Plaintiffs' Interrogatories to Defendant.

DATE**FILINGS—PROCEEDINGS****1972**

- Sept. 8** In Chambers before Judge Coffrin, hearing on allegations in Defendant Betit's Answer; and on Class Action treatment and Propriety of 3-Judge Court. Richard S. Kohn, Esq., for Plaintiffs. David E. Wilson, Ass't. Attorney General for Defendant Joseph Betit and Norman Cohen, Ass't. U.S. Attorney for Government.
- Sept. 8** Statements made to Court by all attorneys.
- Sept. 8** Court makes inquiries of all attorneys.
- Sept. 8** Parties to submit memorandums.
- Sept. 20** Filed Plaintiffs' Memorandum of Law.
- Oct. 23** Filed Defendant Betit's Memorandum of Law.
- Nov. 15** Filed Plaintiffs' Memorandum concerning average monthly payments under AFDC-UF and unemployment insurance.
- Dec. 11** Filed Motion of Roger C. and Arlene M. Derosia and Larry, Harold, Arthur, Mary and Brian Derosia to Intervene.

1973

- Feb. 8** Filed Designation of 3-Judge Court.
- Feb. 24** Filed Stipulation re agreed facts.
- Mar. 2** Filed Defendant's answer to interrogatories.
- Mar. 5** In Court before Judge Oakes, Holden and Coffrin. Richard S. Kohn, Esq., and Nancy Kaufman, Esq., for Plaintiffs. Benson Scotch, Esq., for Defendant Commissioner of the Vermont Department of Social Welfare. William Gray and Carter LaPrade, Ass't. U.S. Attorneys for Defendant Elliot Richardson, individually, etc.

DATE	FILINGS—PROCEEDINGS
1973	
Mar. 5	Hearing on Government's Motion for Judgment on the pleadings; Motion for Summary Judgment; Motion to Dismiss for lack of Jurisdiction.
Mar. 5	Statements made to Court by Mr. LaPrade in support of said Motions; followed by Mr. Scotch for State of Vermont.
Mar. 5	Statements in opposition to said Motions made by Mr. Kohn for plaintiffs.
Mar. 5	Further statements made to Court by Mr. LaPrade in rebuttal to statements made by Mr. Kohn; followed by Mr. Scotch for State of Vermont.
Mar. 5	ORDERED: Plaintiffs have until March 15, 1973, to file memorandum; and Defendants have until March 25, 1973, to file reply memorandum.
Mar. 5	Hearing on Motion of Roger C. and Arlene M. Derosia and Larry, Harold, Arthur, Mary and Brian Derosia to intervene.
Mar. 5	No one objecting thereto, it is ORDERED: Motion to Intervene granted.
Mar. 5	Filed Complaint of Intervenors.
Mar. 16	Filed Plaintiffs' Motion for Leave to File Amended Complaint.
Mar. 16	Filed Plaintiffs' Memorandum of Law.
Mar. 27	Filed Government's Memorandum of Law.
Apr. 10	Filed Government's Memorandum of Law.
Apr. 18	Filed Memorandum of Law Concerning Jurisdiction (Pltfs.).
Apr. 20	Filed Order granting amended Complaint of pltf. intervenors. Mailed copy.
May 4	Filed Government's memorandum of law.

DATE	FILINGS—PROCEEDINGS
------	---------------------

1973

- May 23 Filed Pltfs' Memorandum of Law.
- Oct. 3 Filed motion of Robert and Tianna Spicer and Samantha and Stephanie Perry to intervene.
- Oct. 23 Filed Opinion of Three-Judge Court. Mailed copy to Attys.
- Nov. 6 Filed plaintiffs' motion for rehearing on dismissal of the class action.
- Nov. 6 Filed memorandum of law in support of plaintiffs' motion for rehearing on dismissal of the class action.
- Dec. 17 Filed Defendant's motion for new trial.

1974

- Jan. 8 Filed Supplemental Opinion and Order; Motion for new trial denied—in submitting a decree, appropriate language to insure that the decree runs for the benefit of all others similarly situated in the future is hereby directed to be included—Class action designation is refused. Mailed copy to Attys.
- Jan. 18 Filed Motion to Intervene and for Temporary Relief of Tina, William and Sean Sarazin.
- Jan. 18 Filed Affidavit of William Sarazin.
- Jan. 18 Filed Memorandum of Law of William and Mary Sarazin.
- Jan. 23 In open Court before Judge Holdren. Mary Skinner, Esq., for Intervenors. David L. Kalib, Ass't. Attorney General for Defendant Betit, William Gray, Ass't. U.S. Attorney for Defendant Elliot Richardson.
- Jan. 23 Hearing on Plaintiffs' Motion to Intervene and for Temporary Relief.

DATE

FILINGS—PROCEEDINGS

1974

- Jan. 23 Statements made to Court by Mrs. Skinner in support of her motion and for temporary relief, objected to by Mr. Kalib.
- Jan. 23 Statements made to Court by Mr. Gray who states they could probably get an order as early as next week and the issue at stake could be decided.
- Jan. 23 Further statements made to Court by Mr. Kalib followed by Mrs. Skinner.
- Jan. 23 ORDERED: that the Petition to Intervene will be granted.
- Jan. 23 Filed Plaintiffs' Amended Complaint of Intervention.
- Jan. 24 Issued Summons re Intervenors.
- Jan. 25 Filed Stipulation.
- Jan. 25 Filed Order—The intervention of Mary and William Sarazin is allowed—Defts. restrained from refusing to grant Pltff. ANFC-UF as of 1/28/74 for so long as Pltff remains eligible and foregoes receipt of Vermont unemployment compensation benefits. Copy mailed to attys.
- Jan. 28 Filed Summons returned served as to Defts. Paul R. Philbrook, etc. and Caspar W. Weinberger, etc.
- Feb. 12 Filed Transcript of Hearing on March 5, 1973 before Three-Judge Panel.
- Feb. 20 Filed Order of Judgment of Three Judge Court. Copy mailed to attorneys.
- Feb. 26 Filed Defendants' Motion to Stay, including Supersedeas in District Court and Memorandum in support of Motion.

DATE	FILINGS—PROCEEDINGS
1974	
Mar. 1	Filed Plaintiffs' memorandum of law in opposition to Defendants' motion to stay enforcement of the judgment.
Mar. 1	In open Court, hearing on Defendants' motion to stay. Richard Kohn, Esq. for Plaintiffs; David L. Kalib, Esq. for State; William Gray, Esq. for Government.
Mar. 1	Statements made to Court by Mr. Kalib, followed by Mr. Gray who joins in motion to stay.
Mar. 1	Statements made by Mr. Kohn.
Mar. 1	Ordered: Motion denied as to individual plaintiffs; motion granted as to class plaintiffs.—Parties to submit written Order for Court's approval by March 6, 1974.
Mar. 15	Filed Stay of Judgment. Copy mailed to attorneys.
Apr. 9	Filed Deft. Philbrook's Notice of Appeal to Supreme Court of the U.S. Mailed copy to Richard S. Kohn, Richard A. Axelrod, Esq. & Nancy F. Kaufman, Esq.; Kathleen M. Mitchell, Esq.; David L. Kalib, Esq.; U.S. Attorney; Court Reporter; Judge Oakes, Holden & Coffrin; and Clerk, Supreme Court, Washington, D.C.
Apr. 19	Filed Government's (for Caspar W. Weinberger etc.) Notice of Appeal to Supreme Court of the U.S. Mailed copy to Richard S. Kohn, Esq.; Richard A. Axelrod, Esq.; & Nancy E. Kaufman, Esq.; Kathleen M. Mitchell, Esq.; David L. Kalib, Esq.; U.S. Atty.; Court Reporter; Judge Oakes, Holden & Coffrin; and Clerk, Supreme Court, Washington, D.C.
June 17	Mailed Record on Appeal to Clerk, Supreme Court of the U.S., Washington, D.C. Notified attys.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

Civil Action No. 6550

[Filed March 6, 1972]

JEAN GLODGETT and DEANNA GLODGETT, individually
and on behalf of their minor child, TINA GLODGETT

ROGER PERCY, SR. and ROSAMOND PERCY, individually
and on behalf of their minor children, SHARON, SHEILA,
ROGER, MARY, MATTHEW and CHARON PERCY, and all
others similarly situated

vs.

JOSEPH BETIT, individually and as Commissioner of the
Vermont Department of Social Welfare; ELLIOTT
RICHARDSON, individually and as Secretary of the De-
partment of Health, Education and Welfare, DE-
FENDANTS

I. COMPLAINT

This is a suit for a declaratory judgment that 42 U.S.C. § 607 and Vermont Welfare Regulation 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments to the United States Constitution insofar as they render children of unemployed fathers ineligible to receive ANFC benefits during any week that the father is receiving unemployment compensation under state unemployment compensation law. The action against the Commissioner of Social Welfare is based on 42 U.S.C. § 1983. Plaintiffs also seek damages and injunctive relief against the Commissioner of the Vermont Department of Social Welfare and relief in the nature of mandamus as against the Secretary of the Department of Health, Education and Welfare.

II. JURISDICTION

A. Jurisdiction against the Commissioner of the Vermont Department of Social Welfare is invoked pursuant to 28 U.S.C. § 1343(3)-(4) because it is brought to redress the deprivation under color of state law of a right secured by the fourteenth amendment, and by 28 U.S.C. § 1331 because it arises under the Constitution and the amount in controversy exceeds \$10,000.

B. Jurisdiction against the defendant Secretary of the Department of Health, Education and Welfare is imparted by 28 U.S.C. § 1361 and 28 U.S.C. § 1331 because plaintiffs request relief in the nature of mandamus and the amount in controversy exceeds \$10,000.

III. PARTIES

A. Plaintiffs Jean Glodgett and Deanne Glodgett are citizens of the United States and the State of Vermont and residents of Orleans, Vermont. Plaintiff Tina Glodgett sues by her parents and next friends.

B. Plaintiffs Roger and Rosamond Percy are citizens of the United States and the State of Vermont and residents of Orleans, Vermont. Plaintiffs Sheila, Sharon, Roger, Mary, Matthew and Charon Percy are minor children and sue by their parents and next friends.

C. Defendant Richardson is the Secretary of the United States Department of Health, Education and Welfare. Pursuant to 42 U.S.C. § 602(b), he is authorized to approve state plans for the implementation of ANFC.

D. Defendant Betit is Commissioner of the Vermont Department of Social Welfare. Pursuant to 33 V.S.A. § 2505, he is the chief administrator and executive officer. Through his agents, the plaintiffs and the class they represent have been denied ANFC benefits.

E. On December 16, 1971, Mr. Glodgett applied for ANFC and was accepted. On December 20, 1971, the family received its first check in the amount of \$93.00. Thereafter, they began receiving the full monthly benefit of \$239.00. On January 10, 1972, Mr. Glodgett began receiving unemployment compensation from New Hamp-

shire in the amount of \$14.00 per week. He has been notified by letter dated January 12, 1972, by the Vermont Department of Social Welfare that his ANFC benefits will be terminated beginning February 16, 1972 because he is receiving unemployment compensation.

F. Plaintiff Roger Percy was employed as a trucker by Orlando Construction Company until December 4, 1971, when he was laid off. He applied for ANFC-UF on December 6, 1971. On December 10, 1971, he began drawing unemployment compensation in the amount of \$43.00 per week. His ANFC application was denied on December 20, 1971 for the sole reason that he was receiving unemployment compensation. If he was eligible for ANFC he would draw \$410 per month for his family. His monthly unemployment is approximately \$172.00. To help him meet expenses, he has had to rely on General Assistance.

IV. STATEMENT OF CLAIM

1. The Social Security Act (42 U.S.C. §§ 606 and 607) provides for assistance to needy families with dependent children if the children have been deprived of parental support or care due to death, abandonment, physical or mental incapacity or unemployment of a parent.

2. Section 607(b)(2)(c)(ii) of the Social Security Act provides that assistance under the aid to families with dependent children program for unemployed parents cannot be granted if the father is eligible for or receiving unemployment compensation. Aid must be denied for any week in which the father receives unemployment compensation regardless of the amount and of the unmet need of the family. Section 2331.31(3) of the Vermont Welfare Manual implements this requirement for Vermont.

The needs of the plaintiffs for a minimum subsistence compatible with health and decency are computed by the Department of Social Welfare and appear in the Vermont Welfare Manual at Section 2211.2. The amount received by the plaintiffs under the unemployment compensation program is considerably less than the amounts the De-

partment has adopted as the minimum necessary for a decent and healthful subsistence.

42 U.S.C. § 607(b)(2)(c)(ii) and Vermont Welfare Regulation 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments for the following reasons:

A. Section 607 creates two classes of children whose fathers are unemployed, those who are eligible for state unemployment compensation and those who are not. Needy children are excluded solely because their fathers receive or are eligible to receive unemployment compensation benefits even though such benefits may be far below what would otherwise be received under public assistance. Plaintiffs would be eligible for assistance if they were receiving amounts equal to their unemployment benefits in any other form of income or benefits. Having eligibility turn on the source of the income rather than the amount constitutes an invidious discrimination against the former group of children.

B. 42 U.S.C. § 607(b)(2)(c)(ii) is unconstitutional because it only disqualifies those children whose *fathers* are eligible for unemployment. If both parents are in the home and the mother is receiving unemployment, the family is eligible for ANFC-UF. This is an arbitrary distinction conditioned solely on which parent is receiving unemployment.

C. 42 U.S.C. § 606 provides ANFC eligibility for children who are deprived of parental support or care due to continued absence of one parent from the home. Eligibility under section 606 does not depend upon whether the parent in the home is receiving unemployment or not. Thus, the same children who are ineligible under section 607 because the father is receiving unemployment would be eligible for ANFC under section 606 if either parent deserted the family. The statutory scheme which penalizes children because their parents are not separated is arbitrary and invalid under the fifth and fourteenth amendments.

Subparagraphs A, B and C above are equally applicable to Vermont Welfare Regulation 2331.31(3).

V. CLASS ACTION

Plaintiffs represent the class of those families residing in the State of Vermont who are eligible for the ANFC-UF program but for their fathers' receipt of or eligibility for unemployment compensation and as a result of this exclusion from ANFC are receiving assistance insufficient to meet their needs. Plaintiffs sue on behalf of themselves and all others similarly situated, pursuant to Rule 23, F.R.C.P.:

(a) The members of this class are so numerous that joinder of them all is impracticable.

(b) There are questions of law and fact common to all members of the class, and the common questions of law and fact predominate over any questions effecting only individual members of the class.

(c) The claims of the representative plaintiffs will fairly and adequately protect the interests of the class.

(d) Defendants have acted or refused to act on grounds generally applicable to the class.

(e) An adjudication of the rights of the named representatives of the class would, as a practical matter, be dispositive of the interests of all other members.

VI. THREE JUDGE COURT

The Plaintiffs request that this action be heard by a three judge district court pursuant to 28 U.S.C. §§ 2281 and 2282 because plaintiffs seek a permanent injunction against the enforcement of an act of Congress and the regulations of statewide applicability on the ground that they are repugnant to the Constitution.

VII. PRAYER FOR RELIEF

Wherefore, the plaintiffs respectfully pray that:

1. This court assume jurisdiction of this cause and convene a three judge court pursuant to Title 28, U.S.C. §§ 2281, 2282 and 2284;

2. This court issue an order declaring that this is an appropriate class action and granting plaintiffs leave to proceed with this action as a class action;

3. The court declare 42 U.S.C. § 607(b) (2) (c) (ii) in violation of the due process clause of the fifth amendment and enjoin its enforcement as to plaintiffs and the class they represent;

4. The court declare Vermont Welfare Regulation 2331.31(3) in violation of the equal protection clause of the fourteenth amendment and enjoin its enforcement as to the plaintiffs and the class they represent;

5. That the Vermont Commissioner of Social Welfare be enjoined to pay retroactive benefits to the plaintiffs and the class they represent in the same amount that they would have been paid under 42 U.S.C. § 606 or as if the mother, instead of the father, had been receiving unemployment compensation;

6. That a writ in the nature of mandamus issue against the secretary of the Department of Health, Education and Welfare ordering him to approved the Vermont ANFC-UF plan without requiring it to contain a provision based on 42 U.S.C. § 607(b) (2) (c) (ii) ;

7. Grant such further relief as the court may deed just and appropriate.

JEAN GLODGETT, DEANNA GLODGETT &
TINA GLODGETT

ROGER PERCY, SR., ROSAMOND PERCY,
SHARON, SHEILA, ROGER, MARY,
MATTHEW & CHARON PERCY

By /s/ Richard S. Kohn
Richard S. Kohn
Douglas L. Molde
Richard A. Axelrod
Vermont Legal Aid, Inc.
Attorneys for Plaintiffs

U.S. DISTRICT COURT
DISTRICT OF VERMONT

[Filed April 17, 1972]

[Title Omitted in Printing]

ANSWER OF DEFENDANT BETIT

The defendant Betit answers the complaint of the plaintiffs as follows:

I

1) Defendant Betit denies all of the allegations under the subjects of JURISDICTION and THREE-JUDGE COURT.

2) With regard to parts A and B under the subject of PARTIES, defendant Betit admits that the named plaintiffs are citizens of the United States and of the State of Vermont, but is without knowledge and information sufficient to form a belief as to the truth of this allegation with regard to any alleged parties other than the named plaintiffs, and, therefore, denies the allegation to the extent that it may seek to encompass unnamed parties.

3) With regard to parts C and D under the subject PARTIES, the defendant Betit admits the allegations thereunder, but specifically alleges that any denial of ANFC benefits by him was consistent with State and Federal law as set forth in § 2331.31(3) of the Vermont Welfare Assistance Manual and 42 U.S.C. § 607(b)(2) (ii), respectively.

4) With regard to parts E and F under the subject of PARTIES, defendant Betit admits that the named plaintiffs have been receiving unemployment compensations from the State of New Hampshire in the case of plaintiffs Glodgett and from the State of Vermont in the case of plaintiffs Percy during a period of time herein, but does not admit that they have received unemployment compensation for any specific period of time that the complaint might consider. The defendant Betit

alleges that he is without knowledge and information sufficient to form a belief as to the truth of this allegation with regard to any alleged parties other than the named plaintiffs, and, therefore, denies the allegation to this extent.

Defendant Betit further admits that plaintiffs Glodgett were notified by letter that their ANFC benefits were to be terminated on February 16, 1972 due to the fact that said plaintiffs were receiving unemployment compensation, and that plaintiffs Percy were denied their application for ANFC benefits on or about December 20, 1971, for the reason that said plaintiffs were then receiving unemployment compensation. Defendant Betit alleges, however, that said denials by him were consistent with State and Federal laws as set forth in § 2331.31 (3) of the Vermont Welfare Assistance Manual and 42 U.S.C. § 607(b) (2) (ii), respectively.

5) Under the subject STATEMENT OF CLAIM, the defendant Betit answers as follows:

a) Admits the allegations of Part I.

b) As to Part 2, defendant Betit admits that § 607 (b) (2) (c) (ii) of the Social Security Act provides that ANFC payments may not be made to an otherwise eligible family if the father is eligible for or receiving unemployment compensation, and that § 2331.31(3) of the Vermont Welfare Assistance Manual implements the said Federal section. Defendant Betit further admits that § 2211.2 of the Vermont Welfare Assistance Manual sets forth the basic living requirements for persons eligible for assistance in the ANFC Program, but denies that this would apply to the named plaintiffs, since they do not meet the eligibility requirements for this program. The defendant Betit alleges that he is without sufficient knowledge and information to form a belief as to the truth of the allegation that plaintiffs (named or unnamed) receive "considerably less" from unemployment compensation than the amounts reflected in the aforesaid standards.

c) The defendant Betit denies all the remaining allegations under STATEMENT OF CLAIM.

6) Defendant Betit denies all of the allegations under the subject of "Class action."

II

FIRST AFFIRMATIVE DEFENSE

The plaintiffs' complaint fails to state a claim for which relief can be granted.

III

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the defendants and the subject matter.

IV

THIRD AFFIRMATIVE DEFENSE

That the plaintiffs have an adequate remedy at law and that they have failed to exhaust their administrative remedies and their right of judicial review in State Courts.

V

FOURTH AFFIRMATIVE DEFENSE

The regulations of the Vermont Department of Social Welfare and the purported acts of which plaintiffs complain are based upon Section 407(b)(2)(c)(ii) of the Social Security Act and the requirements imposed by the U.S. Department of Health, Education and Welfare and there is no liability or responsibility on the defendant Betit, individually or as the Commissioner of the Vermont Department of Social Welfare.

FIFTH AFFIRMATIVE DEFENSE

That in view of the Fourth Affirmative Defense, that the defendant Betit should be dropped as a party defendant.

WHEREFORE the defendant Betit, prays that the plaintiff take nothing by this complaint and this action be dismissed with prejudice.

Dated this 17th day of April, 1972.

Respectfully submitted,

JAMES N. JEFFORDS
Attorney General
State of Vermont
Montpelier, Vermont 05602

By: /s/ David E. Wilson
DAVID E. WILSON, ESQ.
Assistant Attorney General
c/o Department of Social Welfare
8 East State Street
Montpelier, Vermont 05602

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed June 15, 1972]

[Title Omitted in Printing]

ANSWER OF DEFENDANT
ELLIOT RICHARDSON

Now comes the United States of America (Elliot Richardson, individually and as Secretary of the Department of Health, Education and Welfare), by its attorney, George W. F. Cook, United States Attorney for the District of Vermont, and submits the following for its answer to this complaint:

I. This paragraph sets forth conclusions of law and not allegations of fact, but insofar as an answer may be required, defendant respectfully denies each and every allegation of fact and conclusion of law that may be contained therein.

II. This paragraph sets forth conclusions of law and not allegations of fact, but insofar as an answer may be required defendant respectfully denies each and every allegation of fact and conclusion of law that may be contained therein.

III.

A. and B. Defendant Richardson does not presently possess sufficient information and knowledge to determine the truth of the allegations contained in these paragraphs.

C. The allegations of this paragraph are admitted.

D. Defendant Richardson does not presently possess sufficient information and knowledge to determine the truth of the allegations contained in this paragraph, EXCEPT that he admits the allegations contained in the first two sentences of this paragraph.

E. and F. Defendant Richardson does not presently possess sufficient information to determine the truth of the allegations contained in these paragraphs.

IV, V and VI. These paragraphs contain conclusions of law and not allegations of fact, but insofar as an answer may be required defendant respectfully denies each and every allegation of fact or conclusion of law contained therein.

VII. All allegations not expressly hereinbefore admitted, denied or modified are denied.

VIII. Defendant respectfully submits the following by way of affirmative defense:

1. This Honorable Court lacks jurisdiction over the subject matter of this action.
2. The complaint fails to state a claim upon which relief may be granted.
3. This suit should be dismissed for lack of proper venue.

Dated at Rutland, District of Vermont, this 15th day of June, 1972.

UNITED STATES OF AMERICA

George W. F. Cook
United States Attorney

By /s/ Norman Cohen
NORMAN COHEN
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

[Filed August 16, 1972]

[Title Omitted in Printing]

MOTIONS OF SECRETARY OF THE DEPARTMENT
OF HEALTH, EDUCATION AND WELFARE

I. MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant Elliot Richardson, Secretary of the Department of Health, Education and Welfare, by and through his attorney, George W. F. Cook, United States Attorney for the District of Vermont, pursuant to Rule 12(c), Federal Rules of Civil Procedure, respectfully moves this Honorable Court to grant to said defendant a judgment on the pleadings, as Plaintiffs fail to state a claim upon which relief may be granted.

WHEREFORE, defendant respectfully requests this Honorable Court grant this Motion for Judgment on the Pleadings.

Dated at Rutland, District of Vermont, this 11th day of August, 1972.

GEORGE W. F. COOK
United States Attorney

By /s/ Norman Cohen
NORMAN COHEN
Assistant U.S. Attorney

II. MOTION FOR SUMMARY JUDGMENT

Defendant Elliot Richardson, Secretary of Health, Education and Welfare, by and through his attorney, George W. F. Cook, United States Attorney for the District of Vermont, pursuant to Rule 56(b), Federal Rules of Civil Procedure, respectfully moves this Honorable Court to grant to this defendant a Summary Judgment, as there is no dispute as to any material fact and defendant is entitled to judgment as a matter of law.

WHEREFORE, defendant respectfully prays this Honorable Court grant this Motion for a Summary Judgment.

Dated at Rutland, District of Vermont, this 11th day of August, 1972.

GEORGE W. F. COOK
United States Attorney

By /s/ Norman Cohen
NORMAN COHEN
Assistant U.S. Attorney

III. MOTION TO DISMISS FOR LACK OF JUDGMENT

Defendant Elliot Richardson, Secretary of Health, Education and Welfare, by and through his attorney, George W. F. Cook, United States Attorney for the District of Vermont, pursuant to Rule 12(b)(2), Federal Rules of Civil Procedure, respectfully moves this Honorable Court to dismiss this Complaint and for cause states:

1. This Honorable Court lacks jurisdiction as the Complaint fails to show that jurisdiction exists under 28 U.S.C. 1331, 28 U.S.C. 1361, or 28 U.S.C. 2201.

WHEREFORE, defendant respectfully prays this Honorable Court grant this Motion to Dismiss for Lack of Judgment.

Dated at Rutland, District of Vermont, this 11th day of August, 1972.

GEORGE W. F. COOK
United States Attorney

By /s/ Norman Cohen
NORMAN COHEN
Assistant U.S. Attorney

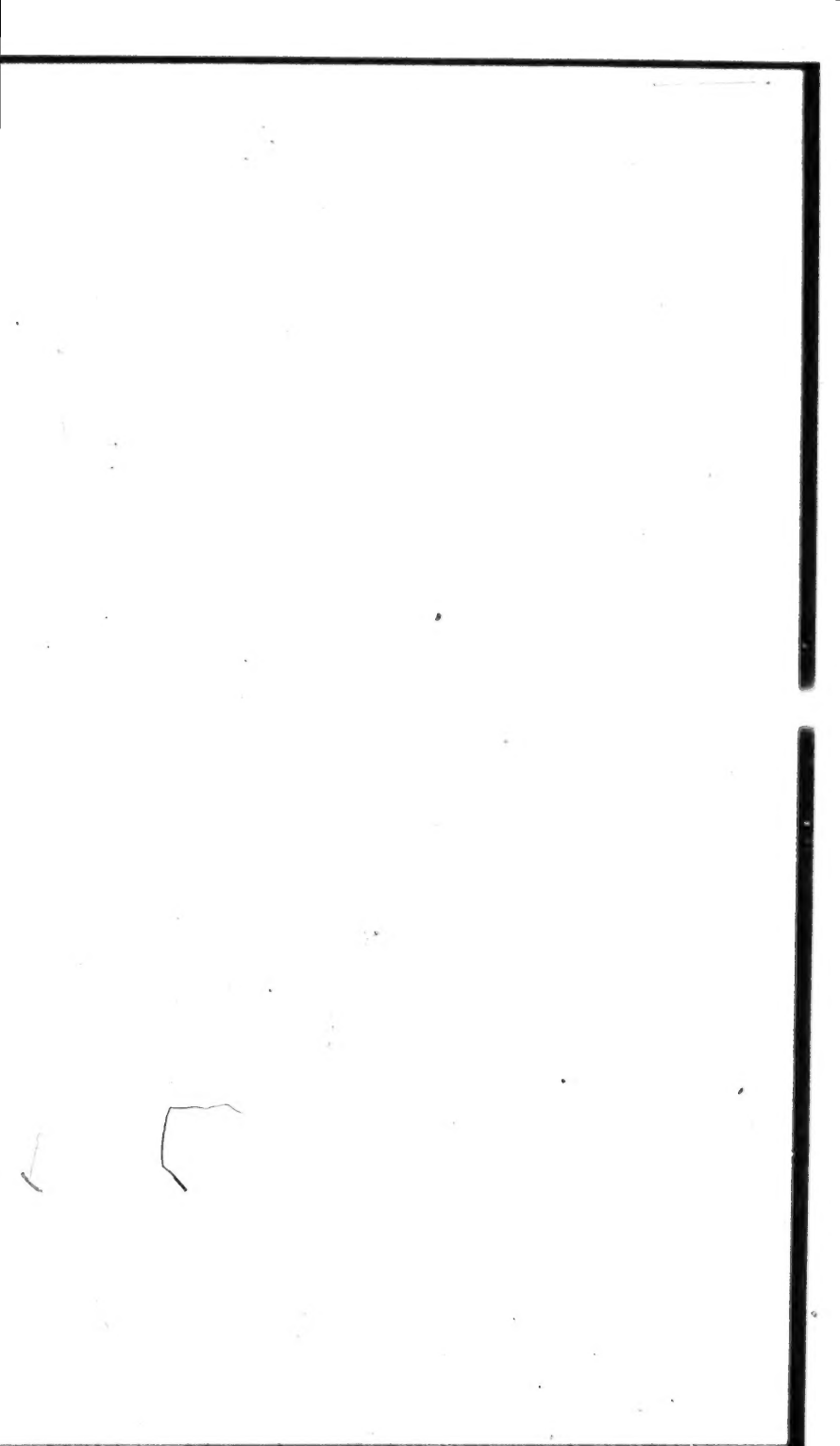
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

[Filed August 16, 1972]

[Title Omitted in Printing]

APPENDIX A TO MEMORANDUM OF LAW IN
SUPPORT OF MOTIONS OF DEFENDANT
RICHARDSON

The average weekly and monthly unemployment compensation figures used herein are derived from statistics found in the *Monthly Labor Review*, December 1971, Vol. 94, No. 12, published by the United States Department of Labor, Bureau of Labor Statistics, at page 100:



MONTHLY LABOR REVIEW, DECEMBER 1971

100 UNEMPLOYMENT INSURANCE

10. Unemployment insurance and employment service operations¹

[All items except average benefits amounts are in thousands]

Item	1970						1971					
	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.
Employment service: ²												
New applications for work	770	637	779	730	864	730	833	761	777	1,005	815	779
New placements	346	304	299	230	257	233	295	309	308	363	313	267
State unemployment insurance program:												
Initial claims ³	1,079	1,208	1,432	1,863	1,796	1,291	1,266	1,111	964	1,152	1,463	1,266
Insured unemployment ⁴ (average weekly volume) ⁵	1,607	1,726	2,017	2,369	2,799	2,751	2,377	2,233	2,001	1,893	1,992	1,912
Rate of insured unemployment ⁶	3.6	3.2	3.7	4.4	5.2	5.2	4.6	4.3	3.6	3.6	3.6	3.6
Weeks of unemployment compensated	6,085	6,058	6,321	6,741	9,667	9,696	16,758	9,224	7,431	7,542	6,420	6,409
Average weekly benefit amount for total unemployment	\$50.64	\$51.45	\$52.24	\$52.43	\$52.83	\$52.13	\$52.94	\$52.28	\$52.48	\$52.72	\$52.19	\$52.06
Total benefits paid	\$300,157	\$304,212	\$342,060	\$461,465	\$536,744	\$557,689	\$631,032	\$41,933	\$634,463	\$446,691	\$537,136	\$465,183
Unemployment compensation for ex-service men: ⁷												
Initial claims ³	46	49	51	58	56	56	57	51	45	54	53	53
Insured unemployment ⁴ (average weekly volume) ⁵	81	83	97	113	127	126	126	121	113	114	120	106
Weeks of unemployment compensated	355	331	363	494	515	509	546	537	542	506	549	512
Total benefits paid	\$18,344	\$17,336	\$19,147	\$26,226	\$27,796	\$28,271	\$33,254	\$30,737	\$27,010	\$30,117	\$29,221	\$30,763
Unemployment compensation for Federal civilian employees: ⁸												
Initial claims ³	13	16	12	13	16	11	12	12	10	20	16	12
Insured unemployment ⁴ (average weekly volume) ⁵	22	23	25	26	27	27	26	31	29	31	36	35
Weeks of unemployment compensated	126	136	138	168	152	148	167	179	119	126	137	155
Total benefits paid	\$5,862	\$6,871	\$7,233	\$8,866	\$8,481	\$8,785	\$10,435	\$8,912	\$7,459	\$7,943	\$8,234	\$9,753
Railroad unemployment insurance:												
Applications ¹¹	12	16	6	9	14	38	20	65	36	45	69	90
Insured unemployment (average weekly volume) ⁵	18	22	20	20	31	22	19	19	18	13	19	32
Number of payments ¹²	36	46	46	46	59	73	67	119	63	62	81	123
Average amount of benefit payment ¹³	\$25.41	\$22.97	\$32.37	\$35.24	\$31.52	\$31.45	\$30.01	\$38.21	\$53.33	\$58.27	\$52.25	\$63.15
Total benefits paid ¹⁴	\$2,877	\$3,422	\$3,736	\$4,176	\$4,674	\$4,359	\$4,566	\$4,364	\$3,522	\$4,139	\$3,699	\$4,134
All programs: ¹⁵												
Insured unemployment ⁴	1,746	1,889	2,223	2,632	3,195	3,216	3,091	2,756	2,443	2,332	2,431	2,349

¹ Includes data for Puerto Rico.
² Includes Guam and the Virgin Islands.
³ Initial claims are notices filed by workers to indicate they are starting periods of unemployment. Excludes transition claims under State program.
⁴ Includes interstate claims for the Virgin Islands.
⁵ Number of workers reporting the completion of at least 1 week of unemployment.
⁶ Initial claims and State insured unemployment include data under the program for Puerto Rican sugarcane workers.
⁷ The rate is the number of insured unemployed expressed as a percent of the average covered employment in a 12-month period.
⁸ Excludes data on claims.
⁹ Excludes data on claims and payments made jointly with other programs.
¹⁰ Excludes data on claims and payments made jointly with State program.
¹¹ An application for benefits is filed by a railroad worker at the beginning of his first period of unemployment in a benefit year; no application is required for subsequent periods in the same year.
¹² Payments are for unemployment in 14-day registration periods.
¹³ The average amount is an average for all compensable periods, not adjusted for recovery of overpayments or settlement of underpayments.
¹⁴ Adjusted for recovery of overpayments and settlement of underpayments.
¹⁵ Represents an unduplicated count of insured unemployment under the State, Ex-servicemen and UCFC programs and the Railroad Unemployment Insurance Act. Includes claims filed under Extended Duration (ED) provisions of regular State laws.
 *—preliminary.
 SOURCE: U.S. Department of Labor, Office of Financial and Management Information Systems for all items except railroad unemployment insurance which is prepared by the U.S. Railroad Retirement Board.
 NOTE: Dashes indicate data not available.

APPENDIX B TO MEMORANDUM OF LAW IN
SUPPORT OF MOTIONS OF DEFENDANT
RICHARDSON

The average monthly AFDC payment rate per family is derived from Table 2, *Public Assistance Statistics, September 1971*, DHEW Publication No. (SRS) 72-03100, NCSS Report A-2 (9/71), which is published by the National Center for Social Statistics, Social Rehabilitation Services, United States Department of Health, Education and Welfare.

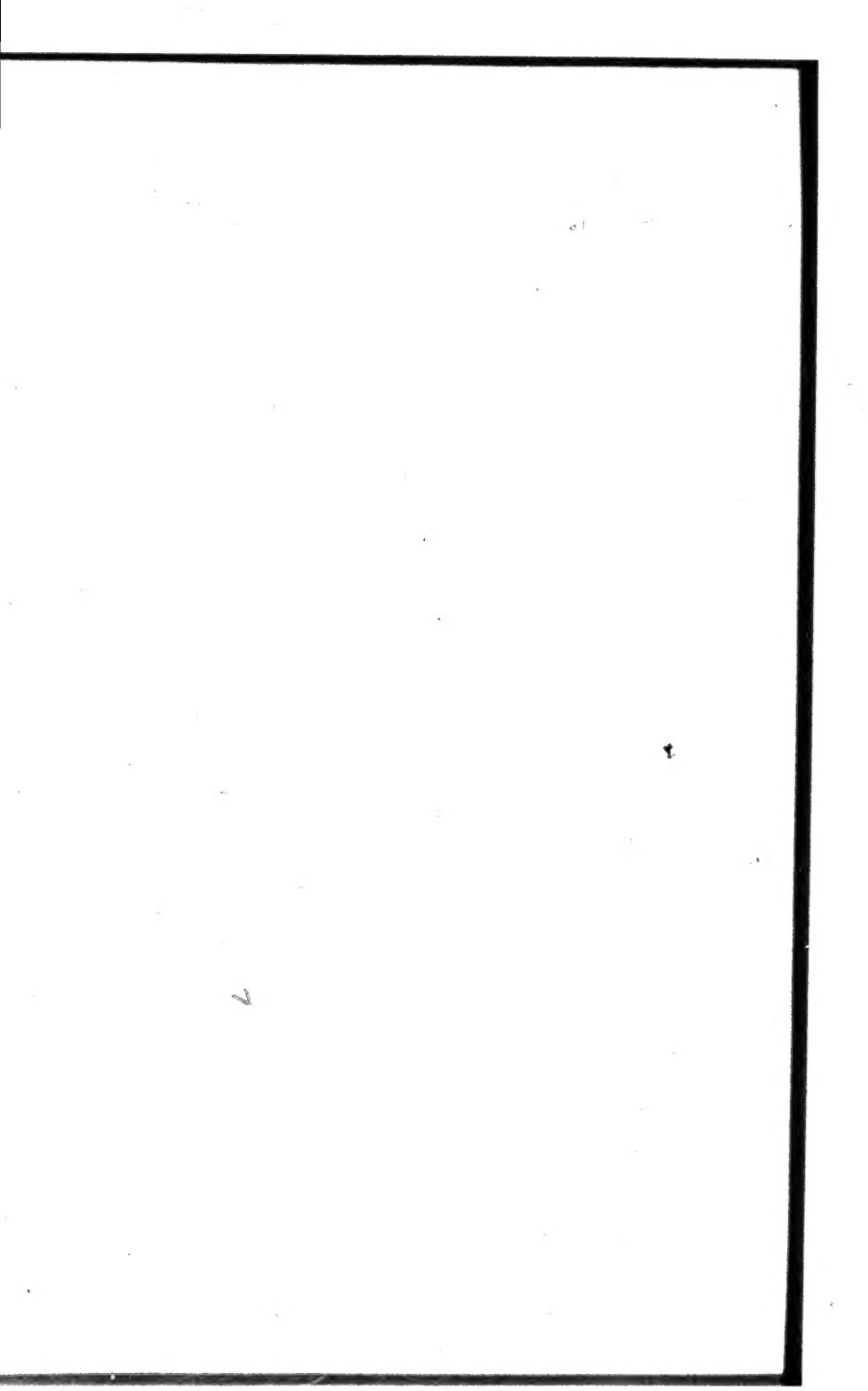


Table 2.--Amount of public assistance payments in the United States, by month, September 1970-September 1971 1/

Year and month	Money payments to recipients 2/								Medical assistance 2/			Emergency assistance 3/	Payments to intermediate care facilities 4/
	Total	Federally aided programs						General assistance 5/	Total	Federally aided program	General assistance 6/		
		Total	Old-age assistance	Aid to the blind	Aid to the permanently and totally disabled	Aid to families with dependent children							
Amount of assistance (In thousands)													
1970													
September 1/..	\$1,236,311	\$747,087	\$696,338	\$196,638	\$8,239	\$87,546	\$443,015	\$51,590	\$465,425	\$446,708	\$8,697	\$1,019	\$41,040
October 3/....	1,286,901	755,408	699,246	157,193	8,321	87,530	446,232	56,162	439,062	479,661	8,741	1,237	42,384
November	1,295,747	762,105	705,018	155,691	8,272	87,702	443,353	57,097	436,057	432,022	7,935	1,124	42,544
December 1/..	1,303,118	808,361	747,290	161,642	8,446	91,325	449,577	61,071	529,945	521,635	5,310	1,474	43,338
1971													
January.....	1,315,747	827,595	745,095	160,894	8,409	91,538	452,344	63,890	500,530	502,181	7,549	1,534	47,593
February.....	1,324,602	818,057	751,023	160,213	8,312	92,452	459,746	66,134	502,651	471,522	9,466	1,109	42,137
March 1/.....	1,442,101	841,520	775,683	160,847	8,444	94,674	511,542	68,845	577,310	551,961	9,829	1,313	47,755
April.....	1,477,644	834,503	770,670	160,880	8,466	96,064	505,460	64,233	565,335	556,629	8,646	1,197	48,203
May.....	1,477,253	833,040	770,450	161,654	8,443	96,441	503,476	62,590	570,240	572,744	7,096	1,240	47,714
June 1/.....	1,468,059	831,700	771,028	155,542	8,393	97,442	504,731	60,612	575,725	567,216	8,716	1,110	43,114
July.....	1,495,473	837,023	775,627	155,053	8,367	93,450	512,957	62,494	575,002	584,940	10,064	1,567	44,771
August.....	1,476,731	846,017	789,547	157,447	8,412	101,621	519,679	63,454	560,752	561,249	9,432	2,054	45,254
September 1/..	1,446,388	899,314	798,236	152,479	8,253	101,510	533,054	63,775	549,337	540,529	8,515	1,641	46,026
Percentage change from preceding month													
1970													
September.....	+3.7	+2.7	+3.0	+1.0	-.1	+.7	+4.2	-.9	+4.9	+4.3	+4.4	-1.1	+0.6
October.....	+2.9	+1.6	+1.2	+.4	+1.0	(2/)	+1.8	+8.9	+4.5	+5.0	-3.0	+71.4	+1.0
November.....	+.8	+1.0	+.9	-1.0	-.6	-.2	+1.6	+1.6	+.4	+.7	-1.7	-.7	+.4
December.....	+6.2	+5.2	+5.1	+3.8	+2.1	+4.1	+5.8	+7.0	+9.2	+8.2	+4.7	+30.5	+1.8
1971													
January.....	-.8	+.7	+.4	-.5	-.4	+.6	+.7	+4.6	-3.9	-3.7	-11.6	-23.1	+6.4
February.....	+.6	+1.3	+1.1	-.4	-1.1	+.7	+1.7	+3.5	-1.3	-1.7	+27.5	-4.5	+13.6
March.....	+9.5	+2.0	+2.2	+.4	+1.2	+.3	+.7	-.4	+12.6	+12.8	-15.9	-15.9	+.8
April.....	+.2	+.1	+.3	(12/)	+.6	-.4	+.2	-.4	-.2	(5/)	-4.5	-17.5	+6.4
May.....	+1.3	-.2	(2/)	+.4	-.2	+1.1	-.4	-.6	+4.3	-4.6	+13.0	-2.5	+0.0
June.....	-1.5	-1.1	-.9	-3.7	-1.1	-.5	-.3	-3.2	-2.8	-2.6	-11.0	-13.5	+5.1
July.....	+2.8	+1.7	+1.6	+.2	+.2	+1.0	+2.2	+1.5	+3.1	+24.6	+13.2	+17.1	+17.1
August.....	-1.0	+1.3	+1.3	-.2	+.5	+3.2	+1.4	+1.0	-4.4	-4.1	-22.4	+4.0	-7.4
September.....	-1.2	-.4	+.5	-2.0	-1.4	-.1	+1.3	-.6	-3.6	-3.6	+.4	-38.6	+1.3
Percentage change from same month of preceding year													
1971													
September.....	-16.8	-15.0	-14.4	-2.7	+0.7	-16.0	-20.5	-27.3	-18.0	-18.4	-0.2	+22.0	-33.6

1/ All data subject to revision.

2/ Includes nonmedical vendor payments other than those for institutional services in intermediate care facilities.

3/ Amounts represent primarily bills paid to medical vendors during the month and therefore are subject to fluctuations unrelated to provision of medical services.

4/ Data include both money payments to families and medical vendor payments. Such emergency assistance to needy families with children authorized under title IV-A. Does not include New York City.

5/ Data represent payments to vendors of institutional services in intermediate care facilities. Federal financial participation in such payments is limited to those in behalf of individuals who qualify for OAA, AB, or APTG under programs operated under State plans approved under titles I, X, XIV, or XVI.

6/ Partly estimated. Does not include Idaho, Indiana, Kentucky, Nebraska, Nevada, New Mexico, Puerto Rico, and Vermont; no program or data not available.

7/ Total amounts and aid to families with dependent children money payments include grants for special needs in Massachusetts as follows: September 1970, for October-December 1970 quarter, \$4,545,000; December 1970, for January-March 1971 quarter, \$6,402,000; March 1971, for April-June 1971 quarter, \$7,418,000; June 1971, for July-September 1971 quarter, \$7,540,000; and September 1971, for October-December 1971 quarter, \$6,965,000. Percentage changes based on data excluding these amounts.

8/ Total amounts and aid to families with dependent children money payments include \$844,000 representing grants for clothing adjustment in Rhode Island for fiscal year 1971. Percentage changes based on data excluding this amount.

9/ Decrease of less than 0.05 percent.

10/ Increase of less than 0.05 percent.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed August 30, 1972]

[Title Omitted in Printing]

INTERROGATORIES

To: Bert Smith, ANFC Director, Vermont Department of Social Welfare.

1. State your name and professional qualifications.
2. How long have you been connected with the Department of Social Welfare?
3. What is your present position with the Department of Social Welfare?
3. How long have you held that position?
5. Describe your present duties.
6. Are you familiar with the provisions of 42 U.S.C. § 607(b)(2)(c)(ii) and F.S.P.M. 2331.31(3)?
7. Do these provisions operate to exclude families from ANFC where the father is receiving unemployment compensation?
8. If a family is denied ANFC-UF due to 2331.31(3) is the family eligible for general assistance?
9. If the answer to #8 is affirmative, are the total benefits from Unemployment Compensation and General Assistance likely to be as high as ANFC benefits?
10. If the answer to #9 is negative, explain why not.
11. Do you have an opinion as to whether 42 U.S.C. § 607 and F.S.P.M. 2331.31(3) discriminates against certain families on the basis of sex?
12. If the answer to #11 is affirmative, please explain the basis for your opinion, giving examples.
13. Do you have an opinion as to whether the exclusion provided by section 607 and 2331.31(3) is arbitrary and irrational.
14. If the answer to #13 is affirmative, please explain the basis for your opinion.

7

15. Can you speak for the Department of Social Welfare on policy matters relating to the ANFC program?

16. If the answer to #15 is affirmative would the Department of Social Welfare like to see § 607(b) (2) (c) (ii) deleted so that otherwise eligible families could supplement unemployment compensation with ANFC up to the State needs standard?

17. Do you have a personal opinion on the question asked in #16?

18. If the answer to #17 is affirmative, please state your opinion giving reasons.

19. Do you have an opinion as to whether 607(b) (2) (c) (ii) and 2331.31(3) encourage fathers receiving Unemployment Compensation to desert their families so that the family will be eligible for ANFC?

20. If the answer to #19 is affirmative, please state your opinion.

/s/ Richard S. Kohn
RICHARD S. KOHN
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vermont
Attorney for Plaintiffs

August 28, 1972

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed November 15, 1972]

[Title Omitted in Printing]

MEMORANDUM CONCERNING AVERAGE
MONTHLY PAYMENTS UNDER AFDC-UF AND
UNEMPLOYMENT INSURANCE

This memorandum deals with certain statistics presented in the *Memorandum of Law in Support of Motions of Defendant Richardson* in a case (Civil No. 6550) brought before the United States District Court, District of Vermont. On page 12 of the above mentioned memorandum it is stated that:

On a nationwide basis, the level of AFDC payments is lower than the average unemployment compensation payment. Statistics for the period October 1970—September 1971 show that the average weekly benefit under unemployment compensation was \$54.09 or about \$234.39 monthly. (See Appendix A.) During the same period, however, the average AFDC family received \$186.58 per month. (See Appendix B.)

Upon examining these figures and the statistical sources from which they were derived several points became clear. First, since the controversy at hand only involves the Unemployed Father segment of the AFDC population in those states participating in the AFDC-UF program, the most relevant AFDC data were not employed. In the same *Public Assistance Statistics* series, cited in Appendix B of the above mentioned memorandum and the source of the crude nationwide AFDC average quoted above, there are statistics by state, on average family payments under the AFDC-UF program. This latter set of figures provides the relevant basis of comparison with average State Unemployment Insurance payments.

The second observation was that comparing these two programs on the basis of nationwide averages was very misleading. Since the levels of payment in both programs are determined in, and vary considerably among, the different states, a nationwide average obviates meaningful comparison. Instead, average AFDC-UF payments should have been compared with average UI payments in those States participating in the AFDC-UF program.

The remainder of this memorandum presents more recent data on AFDC-UF and UI payments for Fiscal Year 1972 (July 1971-June 1972) which provide a more relevant comparison of average payments under the two programs.

Table 1, on the following page, presents figures on average payment under the two programs in FY'72 for the 25 States participating in the AFDC-UF program during that year. Data on UI payments were provided by the U.S. Department of Labor (see Appendix A) and data on AFDC-UF payments were compiled from 12 monthly issues of U.S. Department HEW *Public Assistance Statistics* (see Appendix B). By comparing the two columns in Table I we can see that average AFDC-UF payments were greater than average UI payments in 16 of 25 States in FY'72. Average UI payments were higher in the remaining 9 States. In addition, average payment figures for the 25 States together were: AFDC-UF, \$261.19; UI, \$237.44—although it must again be stressed that these averages conceal meaningful differences which exist among the 25 States. (The difference in State average payments can be seen graphically in Chart 1 which orders the States on the basis of their average AFDC-UF payments.)

In 16 States the amounts by which average monthly AFDC-UF payments exceed average monthly UI payments range from \$1.35 to \$101.04. In the remaining 9 states where average UI payments are higher, the range is from \$17.20 to \$90.28. These differences are presented graphically in Chart 2 which also indicates that 81 per cent of families receiving AFDC-UF lived in the 16 States where average AFDC-UF payments were higher

than average UI payments in FY'72. Only 19 per cent of AFDC-UF families lived in the remaining 9 States where average UI payments were higher.

TABLE 1

COMPARISON OF AVERAGE MONTHLY UNEMPLOYMENT INSURANCE PAYMENTS WITH AVERAGE AFDC-UF MONTHLY FAMILY PAYMENTS, BY STATES WITH AFDC-UF PROGRAMS IN FISCAL YEAR 1972 (July '71 - June '72)

State ^c	Average Monthly Unemployment Compensation Payment ^a	Average Monthly AFDC-UF Family Payment ^b
1. California	\$251.17	\$236.71
2. Colorado	253.54	272.57
3. Delaware	186.48	229.70
4. District of Columbia	189.60	279.88
5. Hawaii	367.14	283.49
6. Illinois	281.45	243.07
7. Kansas	251.28	222.31
8. Maine	220.46	211.64
9. Maryland	203.71	260.69
10. Massachusetts	303.21	252.19
11. Michigan	309.56	254.43
12. Minnesota	333.11	232.07
13. Missouri ^d	175.30	217.40
14. Nebraska	208.91	207.56
15. New York	327.65	258.64
16. Ohio	205.07	231.59
17. Oklahoma	199.90	192.98
18. Oregon	222.73	205.11

TABLE 1 (Continued)

State ^c	Average Monthly Unemployment Compensation Payment ^a	Average Monthly AFDC-UF Family Payment ^b
19. Pennsylvania	265.96	261.18
20. Rhode Island	234.99	252.19
21. Utah	236.57	229.74
22. Vermont	308.00	255.50
23. Washington	242.09	261.31
24. West Virginia	141.20	175.95
25. Wisconsin ^e	357.54	270.98
U.S. Average ^f	261.19	237.44

^a Compiled from monthly *Public Assistance Statistics*, National Center for Social Statistics Report Series A-2, U.S. Dept. of HEW.

^b Unpublished data supplied by State Employment Security Agencies to U.S. Dept. of Labor, Manpower Administration.

^c Only those states with AFDC-UF programs have been included.

^d AFDC-UF data for six months, July-Dec. '71.

^e AFDC-UF data for seven months, Dec. '71 - June '72.

^f U.S. Average for AFDC-UF is for all States with AFDC-UF programs. U.S. Average for Unemployment Compensation is for all States (except New Jersey) plus the District of Columbia and Puerto Rico.

CHART 1

COMPARISON OF AVERAGE MONTHLY UNEMPLOYMENT INSURANCE PAYMENTS WITH AVERAGE AFDC-UP MONTHLY FAMILY PAYMENTS, BY STATES ORDERED BY AMOUNT OF AFDC-UP PAYMENT, FISCAL YEAR 1972 (JULY '71 - JUNE '72)

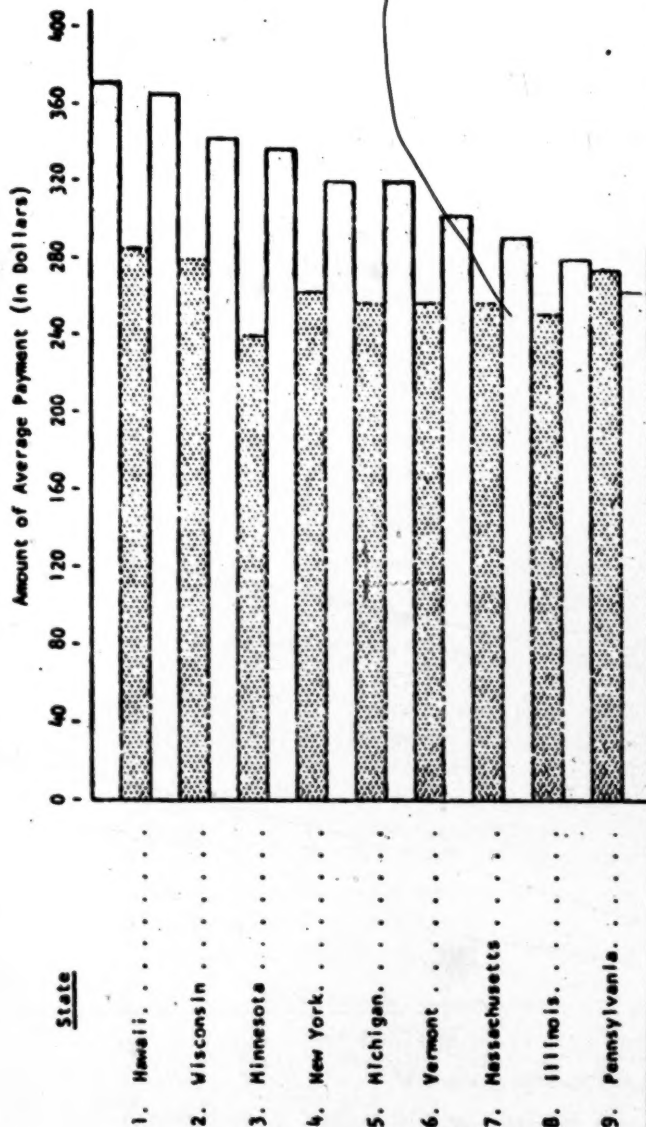
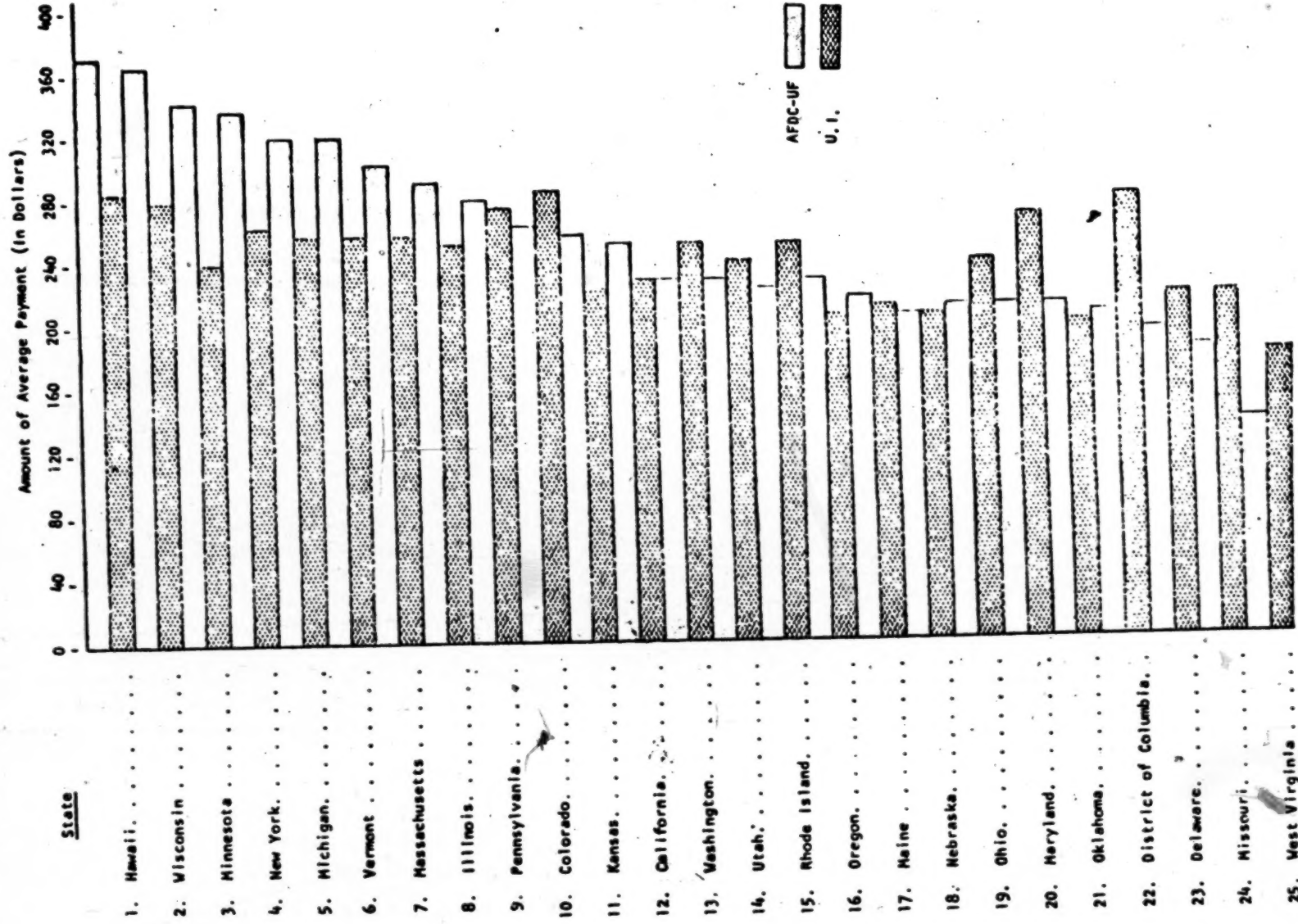


CHART 1

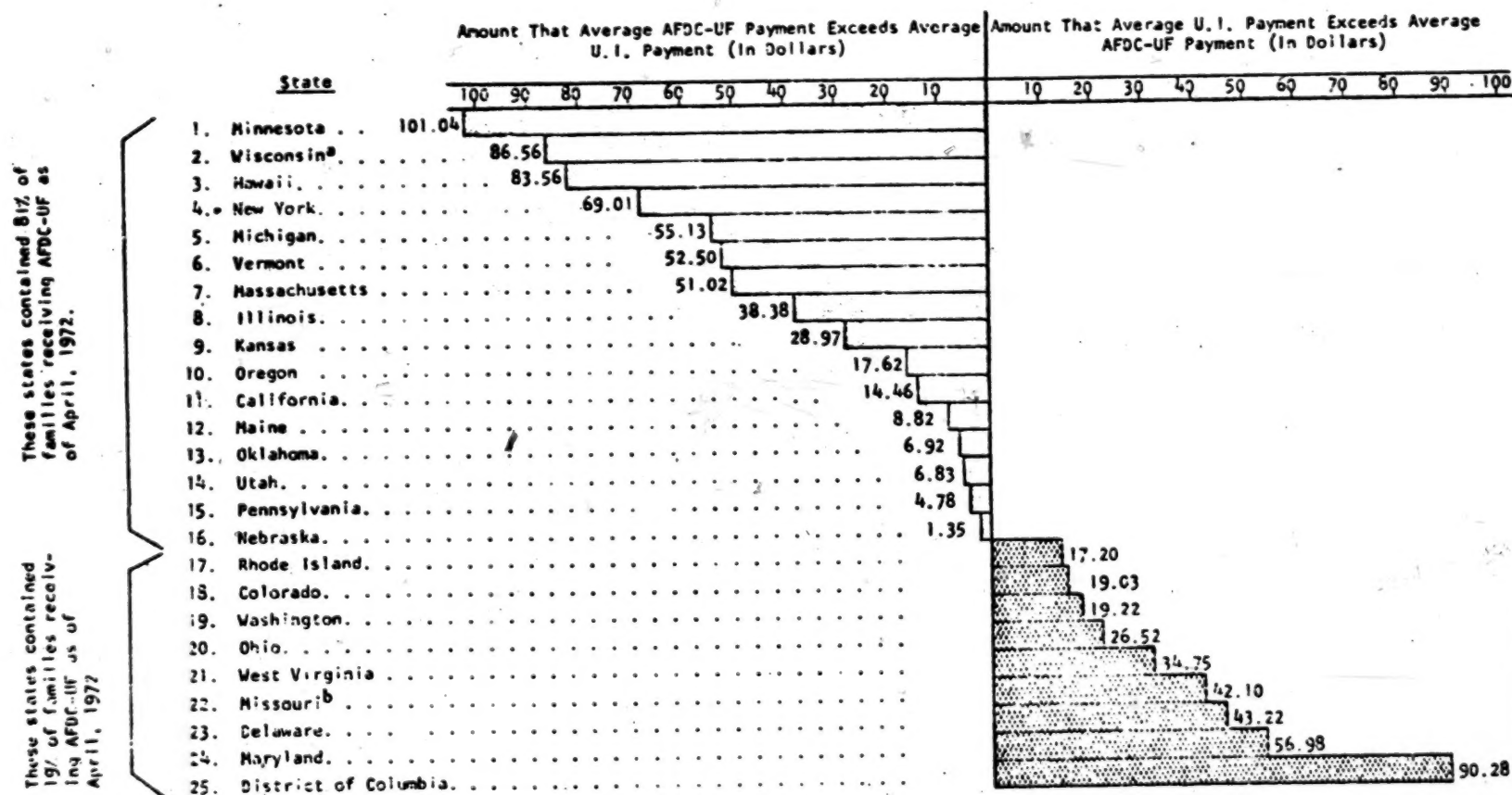
COMPARISON OF AVERAGE MONTHLY UNEMPLOYMENT INSURANCE PAYMENTS WITH AVERAGE AFDC-UF MONTHLY FAMILY PAYMENTS, BY STATES ORDERED BY AMOUNT OF AFDC-UF PAYMENT, FISCAL YEAR 1972 (JULY '71 - JUNE '72)



Source: Table 1.

CHART 2

COMPARISON OF AVERAGE AFDC-UF AND U.I. PAYMENTS, BY STATE FOR FISCAL YEAR 1972 (JULY '71 - JUNE '72)



Source: Table 1.

^aWisconsin AFDC-UF figures are averaged for seven months, December 1971 to June 1972.^bMissouri AFDC-UF figures are averaged for six months, July 1971 to December 1971.

Finally one must consider what these averages for the two programs mean and examine, if possible, the distribution of recipients both above and below the averages. It must be first emphasized that since we are dealing with average figures there are certainly a large number of families receiving higher AFDC-UF benefits even in States where *average* UI is higher than average AFDC-UF. Secondly we must remember that the two programs are designed to benefit two different populations: AFDC-UF, as other public assistance programs, is exclusively for the "poverty" population while UI is to provide temporary benefits to *all* unemployed who fall under its coverage, be they rich or poor and regardless of other sources of nonincome wealth. This fact is important when considering the meaning of the average UI payments. Sources in the Labor Department indicate (and information on the various State plans back this up) that most UI eligibility requirements, being largely dependent on level of salary, are such that most covered workers who are employed *full time* in jobs with salaries over the "poverty level" would be eligible to receive benefits at the State-set maximum. They further indicate that a large part of those workers who receive UI payments substantially below the maximum are those employed full-time in jobs with extremely low wages or employed on a part-time or seasonal basis. From the growing literature on poverty as well as from personal observation most would agree that among the poorer part of the population (with few if any other sources of income or wealth) employment is more likely to be in extremely low-paying full-time work or in part-time or seasonal work. This means that these "marginally-employed" workers, the very people who might otherwise qualify for AFDC-UF, are *more likely* to be those who receive UI benefits which are substantially below the State averages. (Appendix C presents a listing of the percentages of UI recipients in each State who are eligible for maximum payments.)

In contrast to UI payments, which vary largely according to the worker's previous salary, AFDC payments vary according to the presence of other income but pri-

marily according to family size. Thus, the level of benefits for the poorest AFDC recipients is determined almost exclusively by family size. It is generally recognized, and substantiated by the figures shown in Table 2 below, that poor families, particularly nonwhite poor families, tend to be larger. This, in turn, implies that the same families, who would be *more likely* to receive the UI payments under the State averages because of the previous marginal employment status of the father, would otherwise be eligible for higher AFDC-UF benefits because of larger family size.

TABLE 2
MEAN FAMILY SIZE ABOVE AND BELOW THE
POVERTY LEVEL, BY RACE, 1970

	Families			
	Total	White	Black	Spanish-American
Above Poverty Line	3.52	3.48	3.88	4.16
Below Poverty Line	3.88	3.57	4.66	4.80

Source: U.S. Bureau of the Census, Census of Population: 1970, General Social and Economic Characteristics (Final Report PC(1)-C1, United States Summary), Table 95 p. 400.

This is further substantiated when, as of June 1972, we note that in every State except two (D.C. and Rhode Island) participating in the AFDC-UF program, average AFDC-UF family payments are higher than average non-UF, AFDC family payments by substantial amounts. In Vermont, for example non-UF AFDC payments averaged \$225.81 per family while AFDC-UF payments averaged \$331.08 per family. (For differences in other States, see Appendix D.) Thus, in sum, we can see that even State averaging tends to hide the fact that families eligible for AFDC-UF payments are *more likely* to receive payments at or above average AFDC payments and

also *more likely* to receive UI payments below the various State averages.

A final important point to note concerns *maximum* payments allowable under the two programs. All States set legal maximums on IU payments while only a small number do for AFDC payments. Table 3, on the following page, compares these maximums (either legal or administrative) and we can see that in only one State (West Virginia), out of 25 with AFDC-UF programs, is the legal maximum for UI payments higher than it is for AFDC. In the other 24 States the AFDC maximum is higher than that for UI payments or there simply is no legal or administrative maximum placed on AFDC payments.

/s/ Richard S. Kohn
RICHARD S. KOHN
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vermont 05819
November 13, 1972

DAVID WILCOCK
Research Analyst, Legal Action
Support Project
Bureau of Social Science Research
1990 M Street, N.W.
Washington, D.C. 20036
November 10, 1972

TABLE 3

COMPARISON OF STATE LEGAL AND/OR ADMINISTRATIVE MAXIMUMS ON PAYMENTS UNDER THE AFDC
AND UNEMPLOYMENT INSURANCE PROGRAMS, 1971-72

State	State AFDC Legal Family Payment maximums (L) or Administrative maximums on money projects (A)	State Legal Maximums for Unemployment Insurance Payments (10/2/72-1/1/73) ^c	Amount AFDC Maximum Exceeds UI Maximum
1. California	\$471 (L) ^a	\$322.50	\$148.50
2. Colorado	No maximum	369.80	--
3. Delaware	\$555 (L) ^a	279.50	275.50
4. District of Columbia	No maximum	451.50	--
5. Hawaii	No maximum	387.00	--
6. Illinois	No maximum	219.30-417.10 ^d	--
7. Kansas	No maximum	275.20	--
8. Maine	\$399 (L) ^a	270.90	128.10
9. Maryland	No maximum	335.40	--
10. Massachusetts	No maximum	356.90-554.70 ^d	--
11. Michigan	No maximum	240.80-395.60 ^d	--
12. Minnesota	No maximum	275.20	--
13. Missouri	\$322 (A) ^a	270.90	51.10
14. Nebraska	\$396 (L) ^a	258.00	138.00
15. New York	No maximum	322.50	--
16. Ohio	No maximum	245.10-347.10 ^d	--
17. Oklahoma	\$320 (A)	258.00	62.00
18. Oregon	No maximum	266.60	--
19. Pennsylvania	No maximum	365.50-399.90 ^d	--
20. Rhode Island	No maximum	339.70-425.70 ^d	--
21. Utah	\$410 (L)	348.30	61.70
22. Vermont	No maximum	331.10	--
23. Washington	No maximum	335.40	--
24. West Virginia	\$182 (L)	322.50	(-140.50) ^e
25. Wisconsin	^{ab}	378.40	--

Source: Data on UI State maximums provided by the U.S. Dept. of Labor, Manpower Administration. Data on legal and administrative maximums for AFDC: U.S. Dept. HEW, Social and Rehabilitation Service, Characteristics of State Public Assistance Plans under the Social Security Act (Public Assistance Report No. 50, 1971); and USDHEW, 585, Nation Center for Social Statistics, State Maximums and other Methods of Limiting Money Payments to Recipients of the Special Types of Public Assistance, July 1971 (HCSS Report D-3).

^a Maximums calculated for 9 person families.

^b Wisconsin law states that state average of money grants to persons must not exceed 120% of national average of such aid.

^c Weekly maximums multiplied by 4.3 to get monthly maximums for comparison.

^d Two maximums are given in those states which provide greater benefits for unemployed workers with dependent children.

^e Only state where maximum UI exceeds maximum AFDC.

APPENDIX A

AVERAGE STATE UNEMPLOYMENT INSURANCE BENEFITS, FY '72.

States Ranked By Average Weekly Benefit Amount

Hawaii	\$65.93	New Hampshire	\$51.23
Connecticut	65.70	North Dakota	50.83
District of Columbia	65.09	Missouri	50.56
Colorado	63.39	Arizona	49.96
Wisconsin	63.02	Louisiana	49.84
Washington	60.77	Kentucky	49.51
Pennsylvania	60.74	Maine	49.22
Maryland	60.69	Nebraska	48.27
New York	60.15	Oregon	47.79
Vermont	59.42	Virginia	47.03
Michigan	59.17	New Mexico	46.04
Massachusetts	58.65	INDIANA	45.96
Rhode Island	58.65	Alabama	45.29
Nevada	58.10	Texas	44.95
Iowa	56.85	Oklahoma	44.88
Illinois	56.53	Georgia	44.47
U.S. TOTAL	55.22	Tennessee	44.10
California	55.05	Arkansas	43.75
Minnesota	53.97	Montana	43.72
Ohio	53.86	Florida	43.14
Utah	53.43	South Carolina	43.12
Delaware	53.42	South Dakota	42.55
Alaska	52.86	West Virginia	40.92
Idaho	51.84	North Carolina	39.73
Kansas	51.70	Mississippi	37.41
Wyoming	51.44	Puerto Rico	33.53

Source: U.S. Dept. of Labor, Manpower Administration.

APPENDIX B

The following twelve pages present the relevant data for AFDC-UF payments by state, FY '72. DHEW, NCSS Report A-2 (7-7) thru 6/72) *Public Assistance Statistics*.

Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, July 1971 1/

[Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		June 1971 in--		July 1970 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	134,449	652,539	304,401	\$42,578,441	\$249.40	\$51.49	-17.9	-13.7	-22.2	+35.6
Calif.....	28,768	271,113	165,912	13,213,214	✓207.59	48.30	-7.3	-6.9	+21.2	+35.2
Colo.....	2,773	9,464	5,763	530,163	✓247.68	51.02	-2.9	-6.1	+67.1	+61.9
Del.....	176	404	250	12,630	✓145.40	36.50	-2.2	+6.4	+172.0	+199.1
D. C.....	554	2,155	1,576	100,765	✓100.13	44.61	+1.6	+2.7	(1/)	(1/)
Ga.....	2	20	16	741	(2/)	(2/)	(2/)	(2/)	---	---
Ill.....	759	3,427	1,999	269,125	✓354.49	77.61	+6.4	+5.7	+145.8	+158.5
Ind.....	15,265	77,127	47,714	4,104,156	✓272.51	52.08	-5	-3.6	+163.7	+164.0
Kans. 3/.....	419	4,479	2,644	244,701	✓275.51	54.48	+2.1	+4.6	+126.1	+144.7
Maine.....	76	3,054	2,529	177,882	✓211.64	39.93	-14.3	-13.8	+177.5	+215.8
Me.....	697	3,211	1,996	138,375	✓104.10	43.00	+3.4	+5.0	+69.8	+105.7
Mass.....	2,443	12,100	8,260	662,321	✓271.11	51.34	+3.4	+10.7	+91.4	+64.1
Mich.....	2,763	47,915	29,078	2,965,793	✓302.77	61.19	+3.1	+3.4	+153.5	+203.9
Minn.....	1,040	4,048	2,440	332,618	✓311.70	67.22	+3.2	+2.3	(1/)	(1/)
Mo.....	1,404	3,571	2,243	114,577	✓171.40	31.95	+7.5	+7.5	+202.9	+215.4
N. H.....	249	1,070	640	41,717	✓202.51	30.35	-4.9	-6.0	+99.0	+109.8
N. J.....	14,005	81,168	49,831	5,146,514	✓320.40	62.46	-14.8	-2.3	+20.3	+27.2
N. C.....	9,111	42,518	25,110	1,821,600	✓212.02	42.00	+1.1	+1.4	+156.5	+167.5
N. D.....	281	1,460	1,170	60,441	✓144.21	37.60	+5.2	+3.8	+144.8	+176.1
Ohio.....	2,407	11,171	6,518	510,495	✓200.69	44.23	-13.5	-21.2	+36.0	+27.2
Pa.....	2,326	12,100	7,118	364,045	✓210.12	60.63	-2.4	-5.4	+6.0	+8.5
R. I.....	40	3,615	2,343	197,143	✓202.60	48.01	+1.0	-2.4	+174.3	+167.6
S. C.....	1,714	6,714	4,544	300,114	✓212.11	47.04	-24.0	-26.7	+12.0	-6.4
Tenn.....	1,000	2,400	1,240	107,141	✓200.79	60.27	-7.1	+4.2	+175.1	+220.8
Tex.....	1,047	17,141	10,421	1,045,574	✓200.00	53.05	-8.0	-6.4	+61.7	+48.9
W. Va.....	3,141	14,974	12,587	432,214	✓150.31	24.20	-4.7	+7.3	-7.6	-7.3

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision. Data include non-medical vendor payments other than those for institutional services in intermediate care facilities.

2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Program initiated August 1970.

4/ Average payment not computed on base of fewer than 50 recipients; percentage change on fewer than 100 recipients.

5/ Preliminary data.

Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, August 1971 ^{1/}

[Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total ^{2/}	Children	Total amount	Average per--		July 1971 in--		August 1970 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	131,473	633,243	324,723	\$32,904,065	\$250.27	\$51.96	+3.0	-2.1	+16.8	+27.6
Calif. ^{3/}	55,393	257,940	157,146	12,973,036	+234.20	50.29	-5.5	-1.8	+17.5	+30.7
Colo.....	2,126	10,674	5,796	540,301	+254.14	53.69	+1.6	+1.1	+47.7	+47.4
Del.....	184	933	570	84,146	+245.58	36.60	+4.4	+4.6	+135.0	+170.9
D. C.....	633	2,674	1,858	122,632	+193.73	45.52	+14.4	+11.7	(5/)	(4/)
Guam.....	2	20	16	751	(5/)	(5/)	(5/)	(5/)	(5/)	(5/)
Hawaii.....	757	3,558	2,084	303,496	+400.92	84.35	+3.8	+12.8	+135.8	+155.3
Ill.....	15,439	79,010	48,041	4,380,284	+283.72	55.44	+2.2	+6.7	+153.9	+163.1
Kans.....	521	4,463	2,623	242,914	+263.75	54.43	-4	-4	+54.1	+108.9
Maine.....	753	4,027	2,583	160,315	+212.90	39.81	+1.8	+1.5	+137.0	+141.7
Md.....	763	3,467	2,006	151,018	+197.93	43.31	+8.6	+9.4	+92.5	+99.3
Mass.....	2,044	10,537	6,646	596,130	+291.65	56.57	-18.3	-10.0	+51.5	+53.1
Mich.....	10,132	49,937	30,286	3,046,959	+300.73	61.02	+4.4	+4.1	+145.3	+183.7
Minn.....	1,201	5,888	3,230	377,370	+314.21	67.53	+12.9	+13.5	+324.6	+367.3
Mo.....	747	3,992	2,497	127,677	+170.92	31.99	+11.8	+11.9	+218.0	+233.5
Nebr.....	307	1,045	630	40,938	+197.77	39.18	-1.4	-1.9	+73.0	+92.9
N. Y.....	14,049	70,764	43,455	4,217,074	+300.17	59.59	-12.8	-17.4	+2.5	+3.3
Ohio.....	3,653	43,497	25,999	1,879,364	+211.93	43.21	+2.2	+2.9	+149.2	+156.6
Okla.....	333	1,757	1,053	66,771	+206.51	38.00	-5.5	-4.5	+90.2	+107.6
Ore.....	2,425	11,892	6,410	530,613	+218.81	47.84	-1.5	-1.5	-32.8	-29.2
Ta.....	3,334	16,122	9,433	836,937	+247.32	51.91	+1.3	-13.3	-1.0	-16.4
P. I.....	349	4,004	2,449	199,867	+236.43	49.17	+3.8	+6.3	+137.4	+173.0
Utah.....	1,494	9,743	5,883	441,803	+221.14	45.35	+45.0	+37.1	+25.6	+23.6
Vt.....	373	1,479	1,150	115,427	+305.36	60.78	-7.2	-6.4	+91.0	+108.6
Wash.....	4,770	20,435	10,235	1,103,129	+231.54	54.53	+4.4	+5.5	+60.4	+52.5
W. Va.....	3,125	16,741	11,190	414,743	+132.72	24.77	-11.3	-22.1	-25.7	-32.8

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision. Data include non-medical vendor payments other than those for institutional services in intermediate care facilities.

^{2/} Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Estimated by State.

^{4/} Increase of more than 1,000 percent.

^{5/} Average payment not computed on base of fewer than 50 recipients; percentage change on fewer than 100 recipients.

^{6/} Program initiated April 1971.

Table 8.—Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, September 1971 ^{1/}

^{2/}Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments^{3/}

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total ^{2/}	Children	Total amount	Average per--		August 1971 in--		September 1970 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	129,041	615,155	372,896	3/\$32,323,521	3/ \$248.51	3/ \$52.13	-2.9	3/ -2.5	+9.2	3/ +21.4
Calif. ^{4/}	53,769	245,068	148,953	12,277,971	228.35	50.10	-5.0	-5.4	+9.1	+22.3
Colo.....	2,115	9,857	5,662	538,257	254.50	54.61	-2.1	-4.4	+36.0	+37.5
Del.....	175	870	525	54,664	312.37	62.83	-6.8	+60.1	+103.7	+287.6
D. C.....	759	3,254	2,229	146,356	192.83	44.98	+20.8	+19.3	+942.9	+726.7
Guam.....	1	7	5	376	(5/)	(5/)	(5/)	(5/)	(6/)	(6/)
Hawaii.....	842	3,865	2,181	329,315	391.11	85.20	+7.4	+8.5	+134.5	+199.8
Ill.....	16,174	82,075	50,277	4,511,863	278.56	54.97	+3.9	+3.0	+158.2	+168.2
Kans. ^{7/}	621	4,463	2,623	242,924	263.75	54.43	---	---	---	---
Maine.....	669	3,717	2,393	147,450	214.01	39.67	-7.7	-8.0	+112.2	+114.8
Md.....	716	3,437	2,034	148,020	206.73	43.07	-1.4	-2.0	+78.7	+84.5
Mass.....	2,023	10,408	6,535	3/ 776,530	3/ 255.23	3/ 49.61	-1.2	3/ -13.4	+60.0	3/ +33.9
Mich.....	11,115	54,759	33,166	3,313,155	298.08	60.50	+9.7	+8.7	+152.6	+163.9
Minn.....	1,275	5,918	3,426	397,652	313.45	67.53	+5.9	+5.9	+233.2	+248.3
Mo.....	764	4,134	2,606	131,524	172.15	31.82	+3.6	+3.0	+176.6	+209.1
Neb.....	167	907	554	37,852	202.42	39.14	-7.5	-7.5	+66.7	+78.4
N. Y.....	11,219	56,124	34,500	3,566,822	312.58	62.48	-20.7	-16.8	-20.5	-9.9
Ohio.....	9,330	45,343	27,072	1,969,522	211.14	43.27	+4.7	+4.8	+150.1	+158.0
Okl.....	344	1,799	1,124	67,535	196.32	37.54	+2.4	+1.1	+91.6	+107.8
Oreg.....	2,715	12,703	7,500	629,609	231.90	49.56	+14.5	+18.7	-30.3	-23.5
Pa.....	3,418	16,282	9,527	842,754	246.56	51.76	+1.0	+7	+2	-4.8
R. I.....	633	4,300	2,604	210,681	238.60	49.00	+5.8	+5.4	+122.0	+182.3
Utah.....	4,961	9,570	5,763	451,573	230.28	47.14	-1.7	+2.2	+26.8	+25.8
Vt.....	388	1,936	1,167	120,817	311.38	62.41	+1.9	+4.7	+67.6	+84.1
Wash.....	4,532	19,271	10,456	1,094,862	241.58	56.81	-4.8	-8	+49.7	+46.7
W. Va.....	2,726	14,618	9,954	378,067	138.69	25.52	-11.5	-8.8	-36.0	+36.9

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision. Data include non-medical vendor payments other than those for institutional services in intermediate care facilities.

^{2/} Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Amount includes \$50,200 representing grants for special needs for the quarter October-December 1971. The average payment and percentage changes exclude this amount. Including this amount the average payments, per family and per recipient, would be, respectively: U. S. total, \$250.53 and \$52.55; and Massachusetts, \$283.85 and \$74.61.

^{4/} Estimated by State.

^{5/} Average payment not computed on base of fewer than 50 recipients: percentage change on fewer than 100 recipients.

^{6/} Program initiated April 1971.

^{7/} Represents data for August; September data not available.

Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, October 1971 1/

Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		September 1971 in--		October 1970 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	125,833	601,669	363,080	\$32,168,691	\$253.65	\$53.47	-2.2	+0.4	-1.0	+12.3
Calif.....	51,445	237,123	143,035	12,314,348	✓239.37	51.93	-3.2	+3	+3	+16.1
Colo.....	2,553	9,796	5,654	520,947	253.75	53.18	-6	-3.2	+24.6	+21.7
Del.....	143	438	355	24,537	171.59	38.46	-26.7	-55.1	+6.2	+40.9
D. C.....	691	3,045	2,063	144,385	✓209.67	47.58	-6.4	-1.0	+567.8	+463.3
Guam.....	1	7	5	261	(3/)	(3/)	(3/)	(3/)	(6/)	(6/)
Hawaii.....	878	3,989	2,233	326,182	✓371.51	81.77	+3.2	+1.0	+122.5	+184.7
Ill.....	16,126	81,817	50,120	4,619,559	286.47	56.46	-3	+2.4	+140.4	+152.6
Iowa.....	901	4,396	2,602	200,451	222.48	45.60	-4.4	-6.4	+67.9	+51.7
Maine.....	622	3,355	2,168	132,831	213.55	39.59	-9.7	-9.9	+82.1	+83.8
Md.....	645	3,204	1,391	138,079	✓214.11	43.10	-6.8	-6.7	+59.1	+70.0
Mass.....	1,992	10,230	6,419	592,263	✓297.32	57.89	-1.7	+14.7	+37.3	+26.7
Mich.....	11,272	55,393	33,498	3,354,205	297.57	60.55	+1.2	+1.2	+48.4	+97.5
Minn.....	1,376	6,383	3,678	428,922	311.72	67.20	+7.9	+7.3	+198.1	+228.8
Mo.....	735	4,000	2,524	127,439	173.39	31.86	-3.2	-3.1	+172.7	+184.0
Nebr.....	164	1,026	640	39,905	205.70	38.89	+6.1	+5.4	+64.2	+81.0
N. Y.....	10,676	50,414	30,746	3,276,857	325.21	65.00	-10.2	-6.6	-34.7	-27.5
Ohio.....	9,718	47,249	28,641	1,998,143	✓205.61	42.29	+3.8	+1.4	+167.4	+150.3
Ola.....	337	1,775	1,114	66,714	197.96	37.59	-1.3	-1.2	+22.6	+91.1
Oreg.....	2,971	13,676	8,059	684,553	230.41	50.06	+7.7	+8.7	-30.3	-20.1
Pa.....	3,452	16,359	9,541	967,853	✓280.37	59.16	+5	+14.8	+1.4	+8.8
R. I.....	894	4,325	2,615	210,230	✓235.21	48.62	+6	-2	+72.4	+87.4
Utah.....	1,804	8,943	5,429	425,071	✓235.63	47.53	-6.6	-5.9	+13.0	+31.3
Vt.....	393	1,939	1,160	122,690	✓312.19	63.27	+2	+1.6	+66.3	+82.9
Wash.....	4,585	18,946	10,059	1,108,512	✓241.77	58.68	-1.9	+1.2	+39.7	+36.1
W. Va.....	2,529	13,691	9,181	343,189	✓135.70	25.07	-7.6	-9.2	-38.8	-39.1

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision. Data include non-medical vendor payments other than those for institutional services in intermediate care facilities.

2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Average payment not computed on base of fewer than 50 recipients; percentage change on fewer than 100 recipients.

4/ Program initiated April 1971.

Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, November 1971 ^{1/}

[Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total ^{2/}	Children	Total amount	Average per--		October 1971 in--		November 1970 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	127,723	609,550	367,063	\$33,384,457	\$261.38	\$54.77	+1.3	+3.8	-13.7	+4.1
Calif.....	50,071	231,827	139,744	12,486,913	249.38	53.86	-2.2	+1.4	-10.3	+10.2
Colo.....	2,012	9,474	5,471	511,413	254.18	53.98	-3.3	-1.8	+14.6	+13.7
Del.....	191	854	529	38,941	215.14	44.05	+38.6	+58.7	+11.2	+50.3
D. C.....	799	3,464	2,364	162,787	203.74	46.99	+13.8	+12.4	+475.4	+381.8
Guam.....	(3/)	(3/)	(3/)	(3/)	---	---	---	---	---	---
Hawaii.....	925	4,205	2,355	326,410	352.88	77.62	+5.4	+1	+123.2	+158.1
Ill.....	16,912	85,394	52,140	4,880,140	288.56	57.15	+4.4	+5.6	+135.1	+152.2
Kans.....	823	4,012	2,380	182,238	221.43	45.42	-8.7	-9.1	+37.3	+20.9
Maine.....	167	970	674	37,705	225.78	38.87	-71.1	-71.6	-55.2	-55.8
Md.....	738	3,486	2,041	150,804	204.34	43.26	+8.8	+9.2	+62.2	+72.8
Mass.....	1,973	10,145	6,385	651,760	330.34	64.24	-8	+10.0	+22.6	+34.0
Mich.....	11,086	54,273	32,798	3,395,686	306.30	62.57	-2.0	+1.2	-44.5	-10.8
Minn.....	1,470	6,793	3,812	462,027	314.30	68.93	+5.0	+7.7	+165.6	+185.9
Mo.....	702	3,862	2,458	128,114	182.50	33.17	-3.5	+5	+143.2	+163.0
Nebr.....	183	975	611	37,560	205.25	38.52	-5.0	-3.9	+49.8	+63.6
N. Y.....	9,558	47,715	29,220	3,163,731	331.00	66.30	-5.4	-3.5	-41.9	-34.6
Ohio.....	10,067	48,951	29,084	2,056,576	203.30	41.81	+3.6	+2.4	+123.4	+128.2
Okla.....	339	1,804	1,138	68,156	200.90	37.75	+1.6	+2.1	+82.6	+89.1
Oreg.....	3,521	16,482	9,642	783,537	218.19	47.54	+20.5	+14.5	-25.9	-21.6
Pa.....	4,861	23,049	13,466	1,395,636	287.11	60.55	+40.9	+44.2	+44.8	+53.3
R. I.....	825	4,298	2,604	213,470	241.21	49.67	-6	+1.5	+48.8	+60.2
Utah.....	2,007	9,767	5,877	479,072	238.70	49.05	+9.2	+12.7	+19.7	+47.7
Vt.....	380	1,873	1,117	118,313	311.35	63.17	-3.4	-3.6	+49.0	+54.8
Wash.....	5,451	22,273	12,005	1,284,005	235.55	57.65	+17.9	+15.8	+31.9	+31.5
W. Va.....	2,520	13,556	9,083	374,380	148.56	27.62	-1.0	+9.1	-35.7	-28.0
Wyo.....	22	154	65	5,133	(4/)	47.53	---	---	---	---

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision. Data include non-medical vendor payments other than those for institutional services in intermediate care facilities.

^{2/} Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Program in operation; no payments made during November.

^{4/} Average payment not computed on base of fewer than 50 families.

Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, December 1971 1/

1/ Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		November 1971 in--		December 1970 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	133,731	648,634	391,143	3/\$34,895,411	3/ \$255.13	3/ \$53.39	+6.4	3/ +3.7	-18.6	3/ -3.0
Calif.....	50,868	236,634	142,383	11,977,886	✓235.47	50.62	+2.1	-4.1	-19.2	-14.2
Colo.....	2,170	10,264	5,940	550,576	253.72	53.64	+8.3	+7.7	+11.4	+9.9
Del.....	160	795	487	27,444	171.52	34.39	-9.7	-29.5	+1.9	-4.4
D. C.....	950	4,233	2,951	192,431	/202.56	45.46	+22.2	+18.2	+503.0	+360.2
Cum.....	(5/)	(5/)	(5/)	(5/)	---	---	---	---	---	---
Hawaii.....	977	4,436	2,484	366,443	✓375.07	82.61	+5.5	+12.3	+108.7	+151.2
Ill.....	18,619	93,663	57,074	5,409,486	290.54	57.75	+9.7	+10.8	+117.5	+121.0
Kans.....	741	3,667	2,194	170,933	230.68	46.61	-8.6	-6.2	+5.6	-4.1
Maine.....	144	858	609	33,115	229.97	38.60	-11.5	-12.2	-66.3	-66.9
Md.....	825	3,943	2,302	169,509	✓205.95	43.04	+13.3	+12.7	+41.1	+43.7
Mass.....	2,047	10,641	6,720	3/ 786,748	3/✓254.40	3/ 48.94	+4.9	3/ -20.1	+23.0	3/ +19.5
Mich.....	11,766	57,562	34,769	3,592,793	305.35	62.39	+6.1	+5.8	-43.5	+1.9
Minn.....	1,626	7,440	4,235	565,549	348.43	76.15	+11.0	+22.6	+171.7	+216.6
Mo.....	728	3,581	2,525	131,823	181.08	33.11	+3.1	+2.9	+134.6	+151.3
Nebr.....	198	1,053	661	41,088	207.52	39.02	+8.0	+9.4	+35.3	+43.0
N. Y.....	9,289	46,816	28,505	3,105,288	330.74	66.33	-1.9	-1.8	-49.9	-40.9
Ohio.....	10,549	52,587	31,203	2,200,693	✓202.85	41.85	+7.4	+7.5	+106.5	+110.9
Oala.....	352	2,074	1,520	77,220	202.30	37.26	+15.0	+15.5	+70.3	+78.0
Oreg.....	4,426	20,515	12,990	964,665	217.95	47.02	+24.5	+23.1	-26.4	-24.2
Pa.....	5,335	24,836	14,388	1,359,115	✓254.76	54.61	+8.0	-2.6	+49.7	+41.5
R. I.....	859	4,324	2,614	209,823	236.03	48.53	+6	-1.7	+36.7	+72.4
Utah.....	1,944	9,728	5,869	461,003	235.37	47.59	-4	-3.4	+16.3	+37.5
Vt.....	367	1,825	1,096	112,807	307.35	61.81	-2.6	-4.7	+31.9	+33.7
Wash.....	6,006	27,615	15,379	1,522,033	237.55	55.12	+24.0	+18.5	+23.0	+19.3
W. Va.....	2,644	14,264	9,498	405,165	150.40	28.40	+5.2	+5.2	-32.7	-26.0
Wis.....	1,151	4,797	3,867	458,301	(364.83)	65.54	(5/)	(5/)	---	---

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision. Data include non-medical vendor payments other than those for institutional services in intermediate care facilities.

2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Amount includes \$26,000 representing grants for special needs for the quarter January-March 1972. The average payments and percentage changes exclude this amount. Including this amount the average payments, per family and per recipient would be, respectively: U. S. total, \$257.09 and \$53.80; and Massachusetts, \$284.54 and \$73.94.

4/ Program in operation; no payments made in December.

5/ Program initiated October 1971.

Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, January 1972 ^{1/}

^{2/}Excludes vendor payments for medical care and cases receiving only such payments^{3/}

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total ^{2/}	Children	Total amount	Average per--		December 1971 in--		January 1971 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	138,057	656,052	393,727	\$35,824,811	\$259.49	\$54.61	+0.9	+2.6	-16.2	-5.2
Calif.....	50,777	233,149	139,997	12,004,233	✓236.41	51.49	-1.5	+2	-26.3	-16.2
Colo.....	2,315	10,979	6,363	588,837	254.36	53.63	+7.0	+6.9	+5.8	+4.0
Del.....	122	896	542	29,663	162.98	33.11	+12.3	+8.1	+34.3	+32.4
D. C.....	1,055	4,478	3,074	201,187	190.70	45.44	+4.6	+4.6	+43.7	+328.3
Ill.....	1,035	4,762	2,688	368,237	355.78	77.33	+7.3	+5	+91.4	+106.1
Ill.....	18,740	94,576	57,681	5,338,042	284.95	56.44	+1.0	-1.3	+89.0	+78.3
Kans.....	758	3,755	2,253	177,934	234.74	47.39	+2.4	+4.1	-7.4	-16.4
Maine.....	114	661	473	25,501	223.69	38.58	-23.0	-23.0	-79.8	-80.4
Md.....	991	4,609	2,733	197,851	199.65	42.93	+16.7	+16.4	+25.7	+29.7
Mass.....	2,092	10,756	6,754	651,549	✓311.45	60.58	+1.1	-17.2	+21.7	+23.1
Mich.....	12,800	62,142	37,373	4,051,529	316.53	65.18	+8.0	+12.8	+63.2	+83.9
Minn.....	1,821	8,322	4,725	628,302	345.03	75.50	+11.9	+10.9	+144.5	+184.1
Nebr.....	201	1,081	632	42,049	209.20	38.90	+2.7	+2.3	+11.3	+21.6
N. Y.....	9,438	46,654	28,362	3,221,384	341.32	69.05	-3	+3.7	-53.3	-44.1
Ohio.....	11,431	55,167	32,677	2,300,479	262.64	41.84	+5.0	+4.9	+104.2	+104.3
Okla.....	229	7,325	4,487	34,942	203.18	37.35	+12.2	+12.5	+70.3	+75.1
Oreg.....	4,920	22,627	13,071	1,165,568	225.32	49.43	+9.3	+14.9	-30.2	-21.7
Pa.....	4,112	19,246	11,140	1,136,042	276.27	59.03	-22.7	-16.4	+9.6	+13.4
R. I.....	417	4,450	2,438	216,874	236.50	48.74	+2.9	+3.4	+23.7	+34.3
Utah.....	2,166	10,487	6,295	476,866	229.39	47.38	+7.8	+7.3	+15.8	+42.9
Vt.....	418	2,040	1,200	129,472	307.35	62.98	+11.8	+13.9	+13.1	+18.0
Wash.....	7,639	29,998	16,635	1,700,706	241.61	56.69	+8.6	+11.7	+21.7	+16.9
W. Va.....	2,445	12,673	8,404	371,849	152.09	29.34	-11.2	-8.2	-41.7	-31.9
Wis.....	1,262	3/ 10,423	3/ 6,418	742,695	398.87	71.26	+56.9	+58.1	(4/)	(4/)

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Partly estimated by State.

^{4/} Program initiated October 1971.

Table 6.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, February 1972 ^{1/}

[Includes vendor payments for medical care and cases receiving only such payments]^{2/}

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total ^{2/}	Children	Total amount	Average per--		January 1972 in--		February 1971 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	153,422	479,350	408,186	\$39,002,783	\$271.94	\$57.41	+3.6	+8.9	-17.4	-2.3
Calif.....	53,146	244,116	146,861	14,611,729	274.94	59.86	+4.7	+21.7	-24.9	-1.7
Colo.....	2,456	11,551	6,852	620,651	252.71	53.73	+5.2	+5.4	+2.0	+2.2
Del.....	148	720	436	25,499	172.29	35.42	-19.6	-14.0	-11.8	-9.3
D. C.....	1,135	4,742	3,298	215,840	190.17	45.52	+7.1	+7.3	+354.2	+265.5
Hawaii.....	1,041	4,621	2,801	391,502	368.99	79.53	+3.4	+6.3	+79.3	+109.0
Ill.....	19,065	96,313	58,774	5,332,069	279.68	55.36	+1.8	-1.1	+65.2	+61.1
Kans.....	773	3,845	2,305	175,653	227.24	45.68	+2.4	-1.3	-21.0	-32.6
Maine.....	106	604	431	23,596	222.60	39.07	-8.6	-7.5	-85.5	-85.8
Md.....	1,010	4,702	3,778	204,775	202.75	43.55	+2.0	+3.5	+9.4	+12.7
Mass.....	2,153	10,976	6,871	664,719	308.74	60.56	+2.0	+2.0	+12.6	+11.5
Mich.....	13,419	64,349	38,920	4,293,200	319.93	66.15	+4.4	+6.0	+61.7	+79.2
Minn.....	1,871	8,422	4,934	657,848	351.80	76.30	+3.6	+4.7	+118.2	+145.8
Nebr.....	155	1,005	634	39,513	213.58	39.32	-7.0	-6.0	-10.3	-1.2
N. Y.....	9,314	46,144	28,142	3,008,673	323.03	65.20	-1.1	-6.6	-55.6	-49.4
Ohio.....	12,124	58,275	34,409	2,446,492	201.79	41.98	+5.6	+5.9	+68.2	+87.9
Ore.....	452	2,412	1,531	90,674	201.05	37.68	+3.6	+4.5	+50.9	+54.0
Ore.....	5,107	23,118	13,515	1,103,918	216.16	47.75	+3.1	-1.4	-27.4	-22.7
Pa.....	4,061	19,046	10,959	1,084,730	265.80	56.95	-1.0	-4.5	+5.1	-1.6
R. I.....	923	4,463	2,628	216,154	234.19	48.43	+3	-3	+16.1	+18.7
Utah.....	2,054	10,058	6,527	497,873	238.90	49.50	-4.1	+2.2	+7.1	+31.4
Vt.....	507	2,453	1,425	156,179	308.05	64.19	+19.3	+21.6	+10.5	+16.7
Wash.....	7,551	32,094	17,863	1,947,246	259.20	60.97	+7.0	+15.1	+25.1	+29.0
W. Va.....	1,453	12,334	8,147	324,749	136.31	26.65	-2.7	-11.6	-44.4	-43.2
Wis.....	2,348	11,945	7,245	852,291	364.26	71.54	+21.9	+14.5	(2/)	(2/)

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Program initiated October 1971.

Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, March 1972 ^{1/}

^{2/}Excludes vendor payments for medical care and cases receiving only such payments^{3/}

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total ^{2/}	Children	Total amount	Average per--		February 1972 in--		March 1971 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	145,216	685,522	411,018	^{3/} \$42,092,270	^{3/} \$289.86	^{3/} \$61.40	+0.9	^{3/} +7.9	-21.1	^{3/} +1.1
Calif.....	54,781	250,203	150,512	17,483,295	319.15	69.88	+2.5	+19.7	-27.0	+17.6
Colo.....	2,452	11,556	6,674	623,089	256.11	53.92	(6/)	+4	+1.0	-.7
Del.....	177	853	510	29,057	164.16	34.06	+18.5	+14.0	+9	-3.5
D. C.....	1,214	5,110	3,576	228,911	186.56	44.80	+7.8	+6.1	+301.7	+221.1
Hawaii.....	1,088	5,041	2,865	395,697	363.69	78.50	+2.4	+1.1	+76.8	+80.1
Ill.....	19,246	97,038	59,182	5,432,721	282.28	55.99	+8	+1.9	+38.8	+35.3
Kans.....	714	3,625	2,173	165,166	231.32	45.56	-5.7	-6.0	-31.0	-42.0
Maine.....	92	531	383	20,528	223.24	38.68	-12.1	-13.0	-48.7	-39.1
Me.....	998	4,651	2,743	200,608	201.01	43.13	-1.1	-2.0	+11.3	+12.5
Mass.....	2,265	11,204	6,984	^{3/} 856,844	^{3/} 373.84	^{3/} 75.54	+2.1	^{3/} +27.4	+5.0	^{3/} +8.3
Mich.....	13,390	64,991	38,932	4,242,463	316.84	65.28	+1	-1.2	+43.8	+55.3
Minn.....	1,958	8,916	5,060	665,431	339.85	74.63	+3.4	+1.2	+92.9	+113.5
Nebr.....	169	887	549	34,892	205.46	39.34	-11.7	-11.7	-24.4	-16.2
N. Y.....	9,030	44,320	26,901	3,008,390	333.16	67.88	-4.0	(5/)	-59.0	-51.3
Ohio.....	12,656	60,719	35,799	2,561,030	202.20	42.18	+4.2	+4.7	+70.7	+71.4
Ola.....	457	2,419	1,523	92,730	202.91	38.33	+3	+2.3	+23.8	+28.2
Ore.....	4,553	22,672	13,301	1,126,216	227.38	49.67	-1.9	+2.0	-22.5	-11.6
Pa.....	4,010	18,604	10,679	1,045,708	260.78	56.21	-2.3	-3.6	+2.9	-5.2
R. I.....	856	4,078	2,438	196,316	229.34	48.14	-8.6	-9.2	+1.1	+6.7
Utah.....	2,161	10,514	6,227	508,046	235.10	48.78	+3.5	+2.0	+15.4	+45.4
Vt.....	593	2,848	1,670	180,614	304.58	63.42	+17.1	+15.6	+14.7	+19.7
Wash.....	6,058	29,515	16,625	1,734,650	249.59	58.84	-8.0	-11.3	+17.6	+21.2
W. Va.....	2,271	11,754	7,750	298,046	131.24	25.36	-4.7	-9.3	-48.2	-48.7
Wis.....	2,717	13,573	8,162	969,732	356.91	71.45	+13.5	+13.4	(6/)	(6/)

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Amount includes \$260,000 representing grants for special needs for the quarter April-June 1972. The average payments and percentage changes are affected accordingly.

^{4/} Increase of less than 0.05 percent.

^{5/} Decrease of less than 0.05 percent.

^{6/} Program initiated October 1971.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, April 1972 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		March 1972 in--		April 1971 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	139,380	659,926	350,104	\$36,933,190	\$264.98	\$55.97	-3.7	-12.3	-23.4	-9.9
Calif.....	52,931 -	243,072	146,564	13,717,428	259.16	56.43	-2.9	-21.5	-26.4	-3.9
Colo.....	2,347	10,960	6,343	597,389	254.53	54.51	-5.2	-4.1	-4.3	-5.4
Del.....	166	799	474	28,270	170.30	35.38	-6.3	-2.7	-6.4	-10.4
D. C.....	1,284	5,358	3,769	238,890	186.05	44.59	+4.9	+4.4	+269.3	+226.1
Hawaii.....	1,142 -	5,311	3,027	397,952	348.50	74.94	+5.4	+6	+77.7	+77.8
Ill.....	18,619 -	94,043	57,417	5,199,759	279.27	55.29	-3.1	-4.3	+24.9	+19.2
Iowa.....	616	3,143	1,881	174,164	282.73	55.41	-13.3	+5.4	-35.8	-34.7
Maine.....	94 -	546	394	21,128	224.77	38.70	+2.8	+2.9	-88.6	-88.9
Md.....	868	4,113	2,413	178,814	206.01	43.48	-11.6	-10.9	+21.2	+23.7
Mass.....	2,411 -	11,844	7,391	689,544	286.00	58.12	+5.9	-18.6	+7.5	+6.1
Nich.....	12,154 -	59,178	25,262	3,821,148	314.39	64.57	-8.9	-9.9	+21.1	+34.1
Ninn.....	1,694 -	8,635	4,918	659,026	347.95	76.32	-3.2	-1.0	+73.8	+87.4
Nebr.....	138	782	504	29,527	216.86	38.27	-11.8	-14.2	-36.3	-36.6
N. Y.....	8,482	41,661	25,262	2,910,715	343.16	69.87	-6.0	-3.2	-60.2	-51.0
Ohio.....	12,793	61,251	36,081	2,590,512	202.49	42.29	+9	+1.1	+55.9	+54.8
Ola.....	404 -	2,126	1,333	80,707	199.77	37.96	-12.1	-13.0	-2	+3.3
Ore.....	4,355 -	19,840	11,649	952,625	218.74	48.02	-12.5	-15.4	-22.6	-14.9
Pa.....	3,944 -	18,336	10,545	970,958	244.19	52.95	-1.4	-7.1	+6.9	+5
R. I.....	800	3,438	2,307	183,433	235.79	49.15	-5.9	-3.9	-4.3	+2.0
Utah.....	2,042 -	9,831	5,854	569,534	249.53	51.99	-5.9	+3	+4.2	+16.0
Vt.....	626 -	3,017	1,765	192,283	306.19	63.84	+5.8	+6.5	+29.3	+36.9
Wash.....	6,290	27,066	15,011	1,365,666	251.30	58.40	-8.3	-9.0	+10.4	+19.2
W. Va.....	2,154	11,223	7,428	304,213	141.23	27.11	-4.5	+2.1	-49.8	-48.8
Wis.....	2,824	13,968	8,374	898,870	318.30	64.35	+2.9	-7.3	(2/)	(2/)

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Program initiated October 1971.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments,
by State, May 1972 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		April 1972 in--		May 1971 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	133,750	630,452	373,235	\$34,958,400	\$261.15	\$55.40	-4.5	-5.5	-23.6	-11.4
Calif.....	50,479	229,979	138,604	12,505,256	247.73	54.37	-5.4	-8.8	-26.6	-9.4
Colo.....	2,261	10,536	6,157	574,034	253.89	54.48	-3.9	-3.9	-1.1	-2.8
Del.....	141	659	385	23,023	163.32	34.94	-17.5	-18.5	-15.8	-20.0
D. C.....	1,294	5,383	3,869	237,279	183.37	44.08	+5	-7	+255.3	+206.1
Hawaii.....	1,151	5,358	3,072	423,911	368.30	79.12	+9	+6.5	+68.0	+78.9
Ill.....	15,261	91,320	56,030	5,068,179	278.46	55.20	-2.4	-2.5	+21.4	+17.3
Iowa.....	553	2,865	1,728	177,178	237.64	55.54	-8.8	-8.6	-36.3	-33.7
Maine.....	92	531	363	27,411	223.73	38.59	-2.7	-3.0	-83.7	-89.0
MD.....	816	3,876	2,282	165,240	263.73	42.89	-5.8	-7.0	+24.0	+25.0
Mass.....	2,343	11,551	7,166	655,567	292.60	59.35	-2.6	-1.6	-1.2	+2.2
Mich.....	11,364	55,324	33,104	3,601,326	316.91	65.02	-6.4	-5.8	+16.7	+25.0
Miss.....	1,846	8,414	4,814	641,447	347.48	76.24	-2.6	-2.7	+74.7	+101.4
Mo.....	131	747	482	28,279	215.87	37.86	-4.5	-5.5	-37.5	-40.2
N. Y.....	7,026	38,843	23,643	2,030,674	332.32	67.73	-6.8	-9.6	-61.1	-52.8
Ohio.....	12,700	61,503	35,911	2,583,873	232.50	42.36	-1.4	-1.3	+13.8	+47.5
Ola.....	773	1,929	1,232	73,649	193.04	38.29	-9.3	-8.5	-7.3	-4.1
Oreg.....	3,779	16,814	9,872	831,475	224.78	49.45	-15.3	-12.7	-21.2	-21.3
Pa.....	3,870	17,721	10,295	1,041,254	269.75	58.10	-2.3	-7.2	+9.3	+10.2
R. I.....	781	3,740	2,215	182,076	234.28	49.59	-3.9	-3.0	-6.7	-5.4
Utah.....	2,020	9,733	5,837	530,121	247.58	51.38	-7	-1.8	+11.5	+54.4
Vt.....	645	3,121	1,841	143,183	307.26	63.50	+3.6	+3.1	+33.4	+40.9
Wash.....	5,872	24,446	13,374	1,411,326	246.34	59.32	-7.6	-8.2	+11.8	+21.3
W. Va.....	1,948	10,443	6,926	271,173	234.46	45.95	-6.9	-10.3	-52.2	-3.4
Wis. 2/.....	3,100	15,355	9,163	1,079,326	327.30	67.02	+9.9	+12.2	(5/)	(5/)

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Estimated by State.

4/ Program initiated October 1971.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, June 1972 ^{1/}

[Excludes vendor payments for medical care and cases receiving only such payments^{2/}

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total ^{3/}	Children	Total ^{4/}	Average per--		May 1972 in--		June 1971 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	127,194	395,650	357,369	3/833,829,649	3/8265.97	3/ 856.79	-5.3	3/ -2.9	-25.0	3/-13.8
Calif.....	47,013	212,330	128,002	12,332,840	262.33	58.08	-7.7	-1.4	-27.9	-13.1
Colo.....	2,043	9,525	5,550	500,397	244.93	52.54	-9.6	-12.8	-6.7	-12.0
Del.....	127	596	349	20,720	163.15	34.77	-9.6	-10.0	-34.8	-32.4
D. C.....	1,929	6,146	4,369	261,740	135.69	42.59	+14.2	+10.3	+165.1	+145.0
Hawaii.....	1,112	5,183	2,981	394,140	334.44	76.04	-3.3	-7.0	+59.1	+54.8
Ill.....	17,308	87,501	53,503	4,710,851	272.18	53.84	-6.7	-7.1	+12.5	+10.7
Kans.....	516	2,647	1,579	146,506	283.93	55.35	-7.6	-8.0	-39.7	-37.2
Maine.....	87	498	359	19,193	220.61	38.54	-6.2	-6.3	-89.2	-89.5
MD.....	767	3,647	2,116	156,595	204.17	42.94	-5.9	-5.8	+17.4	+19.1
Mass.....	2,436	11,884	7,369	2/ 891,101	2/ 365.81	2/ 74.98	+2.9	2/+30.0	-4.7	2/ -2.1
Mich.....	11,189	54,497	32,537	3,574,828	319.49	65.60	-1.6	-7	+17.7	+26.4
Minn.....	1,714	7,774	4,445	598,627	349.20	76.99	-7.6	-6.7	+62.3	+84.1
Nebr.....	101	553	382	22,596	223.72	38.76	-22.0	-20.1	-47.7	-49.1
N. Y.....	7,429	36,496	22,170	2,516,325	338.72	68.95	-6.0	-4.3	-61.7	-51.9
Ohio.....	12,342	59,010	34,763	2,504,701	202.94	42.45	-3.3	-3.1	+40.2	+39.1
Okla.....	317	1,661	1,047	62,329	196.62	37.52	-13.9	-15.4	-15.4	-14.2
Oreg.....	3,246	14,758	8,635	721,659	222.32	48.80	-12.0	-13.2	-11.9	+5.7
Pa.....	3,779	17,589	10,119	1,006,873	266.44	57.24	-1.9	-3.3	+7.8	+3.8
R. I.....	756	3,564	2,115	173,073	231.58	49.17	-3.4	-4.3	-8.1	-9.2
Utah.....	2,032	9,639	5,759	494,516	247.01	51.31	-1.0	-1.1	+8.9	+12.4
Vt.....	596	2,920	1,757	185,493	311.08	63.49	-6.4	-6.4	+32.5	+41.0
Wash.....	1,474	22,250	11,956	1,308,523	239.04	58.81	-9.1	-9.8	+5.6	+17.1
W. Va.....	1,879	9,970	6,595	263,514	140.24	26.43	-4.6	-2.9	-49.6	-46.9
Wis. ^{5/}	3,032	14,953	8,902	960,919	316.93	64.26	+6.1	+3.9	(5/)	(5/)

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families which requirements of such adults were considered in determining the amount of assistance.

^{3/} Amount includes \$287,000 representing grants for special needs in Massachusetts for the quarter July-September 1972. The average payments and percentage changes are affected accordingly.

^{4/} Estimated by State.

^{5/} Program initiated October 1971.

APPENDIX C

PER CENT OF UI CLAIMANTS ENTITLED TO MAXIMUM WEEKLY BENEFITS, JAN.-MAR. 1972

State	%	State	%
Alabama	43.5	Montana	62.1
Alaska	57.0	Nebraska	64.9
Arizona	INA.	Nevada	47.2
Arkansas	23.0	New Hampshire	22.2
California	34.5	New Jersey	43.2
Colorado	20.5	New Mexico	37.2
Connecticut	36.5	New York	43.9
Delaware	54.2	North Carolina	12.6
District of Columbia	26.8	North Dakota	65.5
Florida	49.7	Ohio	71.5
Georgia	50.2	Oklahoma	35.8
Guam	-	Oregon	51.3
Hawaii	37.5	Pennsylvania	32.8
Idaho	58.1	Puerto Rico	15.6
Illinois	45.9	Rhode Island	INA.
Indiana	71.5	South Carolina	27.7
Iowa	70.2	South Dakota	64.0
Kansas	58.1	Tennessee	37.5
Kentucky	52.5	Texas	47.8
Louisiana	61.2	Utah	34.9
Maine	45.3	Vermont	48.0
Maryland	41.1	Virginia	40.3
Massachusetts	47.4	Virgin Islands	-
Michigan	72.2	Washington	58.7
Minnesota	57.4	West Virginia	19.6
Mississippi	43.4	Wisconsin	42.6
Missouri	59.1	Wyoming	67.6
Total	45.4		

Source: U.S. Department of Labor, Manpower Administration.

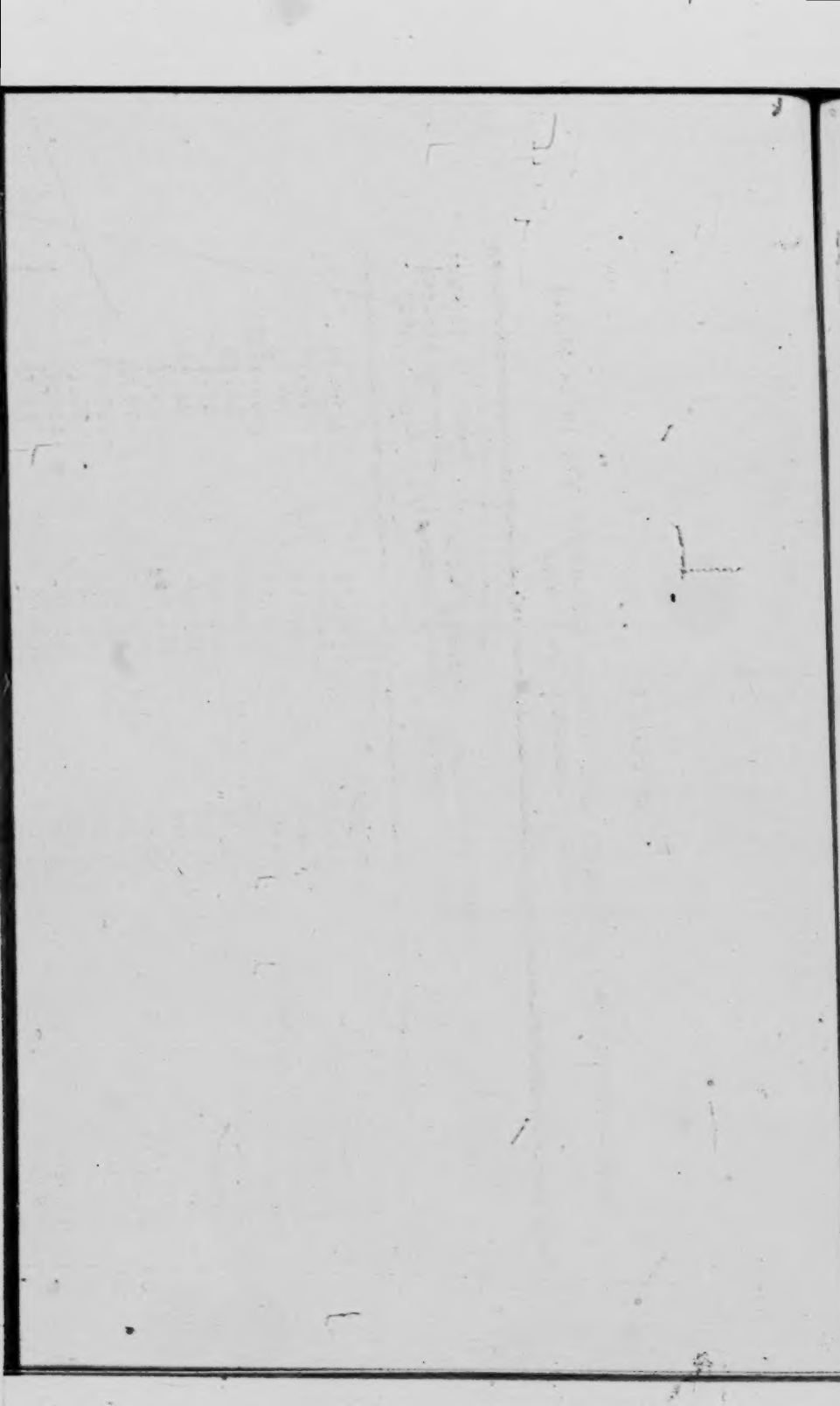
APPENDIX D

AVERAGE MONTHLY FAMILY PAYMENTS UNDER AFDC-UF AND NON-UF AFDC IN 24 STATES WITH AFDC-UF PROGRAMS, JUNE 1972

State	Average non-UF Family Payments	Average AFDC-UF Family Payments	Amount UF Segment Average Exceeds Regular AFDC
1. California	\$204.99	\$262.33	\$ 57.34
2. Colorado	168.65	244.93	76.28
3. Delaware	118.86	163.15	44.29
4. District of Columbia	201.16	135.69	(-65.47) ^a
5. Hawaii	271.94	354.44	82.50
6. Illinois	223.57	272.18	48.61
7. Kansas	201.72	283.93	82.21
8. Maine	139.76	220.61	80.85
9. Maryland	156.30	204.17	47.87
10. Massachusetts	345.03	365.81	20.78
11. Michigan	231.28	319.49	88.21
12. Minnesota	232.27	349.20	116.93
13. Nebraska	148.47	223.72	75.25
14. New York	253.79	338.72	84.93
15. Ohio	155.66	202.94	47.28
16. Oklahoma	136.68	196.62	59.94
17. Oregon	159.47	222.32	62.85
18. Pennsylvania	231.62	266.44	34.82 ^a
19. Rhode Island	233.10	231.58	(-1.52)
20. Utah	180.77	247.01	66.24
21. Vermont	225.81	311.08	85.27
22. Washington	202.88	239.04	36.16
23. West Virginia	109.96	140.24	30.28
24. Wisconsin	246.52	316.93	70.41
24 State Average	219.08	265.97	46.89

Source: USDHEW, National Center for Social Statistics, Public Assistance Statistics, June 1972 (NCSS Report A-2), 6/72, Tables 7 and 8.

^aRegular AFDC average exceeds AFDC-UF average.



UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed December 11, 1972]

[Title Omitted in Printing]

MOTION TO INTERVENE

Now come Roger C. and Arlene M. Derosia, and Larry, Harold, Arthur, Mary and Brian Derosia, minor children of Roger and Arlene Derosia, by their attorney, Richard S. Kohn, Vermont Legal Aid, Inc. pursuant to Rule 24 (b) and (c), Federal Rules of Civil Procedure, to move this Honorable Court to permit them to intervene in the above case. In support of their motion herein, said parties stipulate and certify as follows:

1. That they reside in Swanton, Franklin County in the State of Vermont.

2. That their claims against the above defendants present questions of law and/or facts in common with the original plaintiffs' main action in that the intervenors are deprived of ANFC-UF because the father is receiving state unemployment compensation, which is much lower than the ANFC benefits. (Please see Intervenors' complaint which is attached hereto.)

3. That their intervention in the above cause will not unduly delay or prejudice the adjudication of the rights of the original parties.

Dated at St. Johnsbury in the County of Caledonia and State of Vermont this 11 day of December, 1972.

/s/ Richard S. Kohn
RICHARD S. KOHN
Vermont Legal Aid, Inc.
St. Johnsbury, Vermont 05819
56 Railroad Street
Attorney for Intervenors

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed February 24, 1973]

[Title Omitted in Printing]

STIPULATION

It is hereby stipulated and agreed by and between the undersigned attorneys for the respective parties hereto as follows:

1. Plaintiffs Jean Glodgett and Deanne Glodgett are citizens of the United States, residents of Orleans in the State of Vermont, and the parents of plaintiff Tina Glodgett, their minor child, who resides with them.

2. On December 17, 1971, Mr. Glodgett applied for ANFC at the Newport District Office of the Department of Social Welfare and his application was accepted. On December 20, 1971, the family received its first check in the amount of \$93.00, covering the balance of December. Thereafter, the family received a monthly benefit of \$239.00.

3. On January 10, 1972, Mr. Glodgett began receiving unemployment compensation from New Hampshire in the amount of \$14.00 per week. On January 12, 1972, he was notified by letter that his ANFC benefits would be terminated beginning February 16, 1972, because he was receiving unemployment compensation.

4. Mr. Glodgett stopped receiving unemployment compensation in March, 1972. On April 5, 1972, a new ANFC grant was approved for the family. The family received a check for \$223.00 for the balance of April and \$239 beginning May 1. The grant was terminated on July 1 due to the fact that Mr. Glodgett had become employed. On April 21, 1972, the family again received an ANFC grant due to incapacity of Mr. Glodgett. The grant was discontinued on November 16, 1972, when Mr. Glodgett returned to work.

5. Plaintiffs Roger and Rosamond Percy are citizens of the United States and residents of Orleans in the State of Vermont. Plaintiffs Sheila, Charon, Roger, Mary, Matthew, and Sharon Percy are their minor children who reside with them.

6. Roger Percy was employed as a trucker by Orlando Construction Company until December 4, 1972, when he was laid off. He applied for ANFC-UF on December 6, 1972. On December 10, 1971, he began drawing unemployment compensation in the amount of \$43.00 per week. His ANFC application was denied on December 20, 1971, for the sole reason that he was receiving unemployment compensation. If he was eligible for ANFC he would have drawn \$410.00 per month for his family. His monthly unemployment compensation was approximately \$172.00. On several occasions the family obtained General Assistance benefits to help them buy groceries. As of October 28, 1972, Mr. Percy was no longer eligible for unemployment compensation. As of November 6, 1972, his family has been receiving ANFC-UF.

7. Roger C. Derosia and Arlene M. Derosia are citizens of the United States and residents of Swanton in the State of Vermont. Larry, Harold, Arthur, Mary and Brian Derosia are their minor children and reside with them. Mr. Derosia was employed by O. C. McCuin in Highgate Center, Vermont, for three years. He terminated his employment on August 25, 1972. On September 8, 1972, he applied for ANFC-UF. The Department of Social Welfare put the family on General Assistance. On or about October 25, 1972, a decision was made to grant the family ANFC-UF retroactive to September 24, 1972. The grant was in the amount of \$394.00 per month. On November 6, 1972, Mrs. Derosia notified the Department of Social Welfare that the family was getting unemployment compensation of \$56.00 per week. For this reason, the ANFC-UF grant was terminated as of December 1, 1972.

Dated at St. Johnsbury, Vermont this 11 day of December, 1972.

/s/ Richard S. Kohn
 RICHARD S. KOHN, ESQ.
 56 Railroad Street
 Vermont Legal Aid, Inc.
 St. Johnsbury, Vermont 05819
 Attorney for Plaintiffs

Dated at Montpelier, Vermont, this — day of December, 1972.

/s/ D. Eugene Wilson
 EUGENE WILSON, ESQ.
 Assistant Attorney General
 8 State Street
 Montpelier, Vermont 05602
 Attorney for Defendant Betit

Dated at Rutland, Vermont, this — day of December, 1972.

/s/ Carter LaPrade
 CARTER LAPRADE, ESQ.
 Assistant U.S. Attorney
 Federal Building
 Rutland, Vermont 05701
 Attorney for Defendant Richardson

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed March 2, 1973]

[Title Omitted in Printing]

ANSWER TO INTERROGATORIES

1. Bert N. Smith, I have a Bachelor of Arts degree from the University of Vermont in Burlington, a Master of Social Work degree from the University of Connecticut in Hartford, Connecticut, and am a member of the Academy of Certified Social Workers.

2. Approximately 15 years.

3. Director of the Aid to Needy Families with Children Program.

4. Since April 14, 1971.

5. I am directly responsible to the Commissioner of Social Welfare for all matters pertaining to the ANFC Program administration to include program planning, legislation, policies, procedure, evaluation, and budgeting.

6. Yes.

7. Yes.

8. No, since the family must first live upon the UCC benefits available each week in addition to having monthly income of \$1.00 below the payment level under ANFC.

9. Not answered.

10. As indicated in answer #8, General Assistance is not automatic in such cases. In most instances the level of UCC benefits is less than the ANFC payment standards. It is quite likely if UCC benefits are exhausted and no money is available to meet an essential emergency need, some General Assistance might become available. However, even then the combination of both UCC and GA benefits would still not equal the level of payment under the ANFC Program.

11. Yes.

12. Sex discrimination is evidenced by the application of the Federally mandated law since a female may draw UCC and ANFC benefits concurrently while a man cannot.

13. Yes.

14. It is my personal opinion that on its face the Federal law is irrational when viewed from the knowledge of present day job markets. The only basis I can see for the law was that men are viewed by Congress and society as the principal bread winner in a family and thus it would appear that keeping compensation during a period of unemployment at a low level would cause them to seek work more actively and eagerly. This philosophy makes no sense at all when suitable jobs are not available. Further the Federal law mandates that a father be unemployed for 30 days before he be considered to meet the Federal definition and certainly after this period if he is not employed but receiving UCC benefits I can see nothing to be gained by having a family with minor children living on a standard which may be less than that recognized by the Welfare agency as necessary to sustain a level of decency and health.

15. No. Only the Commissioner of Social Welfare is so empowered. I can recommend on matters pertaining to Welfare policy.

16. Not answered.

17. Yes.

18. It is my opinion Congress should change the Federal law to remove the prohibition of concurrent receipt of UCC and ANFC benefits when the UCC benefits do not equal the state ANFC assistance level. My reasons for this position have been clarified by my answer to question # 14.

19. Yes.

20. It is my opinion that there is no evidence to indicate that the Federal law has had the effect of in-

creasing the number of families on the ANFC Program because of a deserting father.

/s/ Bert N. Smith
BERT N. SMITH
ANFC Program Director for
the State of Vermont

AFFIDAVIT

I, Bert N. Smith, ANFC Program Director for the State of Vermont, being duly sworn according to law, depose and state the the answers to the aforesaid Interrogatories are correct to the best of my knowledge, information, and belief.

/s/ Bert N. Smith
BERT N. SMITH

Sworn to and subscribed before me this 1st day of Sept., 1972.

/s/ Samuel A. McLaughlin
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed March 5, 1973]

[Title Omitted in Printing]

COMPLAINT

I. This is a suit for a declaratory judgment that 42 U.S.C. § 607(b) (2) (c) (ii); 45 C.F.R. §§ 233.100(a) (5) (ii) and 233.100(c) (v) (b); and Vermont Welfare Regulation 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments to the United States Constitution insofar as they render children of unemployed fathers ineligible to receive ANFC benefits during any week that the father is receiving unemployment compensation under state unemployment compensation law. The action against the Commissioner of Social Welfare is based on 42 U.S.C. § 1983. Plaintiffs also seek damages and injunctive relief against the Commissioner of the Vermont Department of Social Welfare and relief in the nature of mandamus as against the Secretary of the Department of Health, Education and Welfare.

II JURISDICTION

A. Jurisdiction against the Commissioner of the Vermont Department of Social Welfare is invoked pursuant to 28 U.S.C. § 1343(3)-(4) because it is brought to redress the deprivation under color of state law of a right secured by the fourteenth amendment; by 28 U.S.C. § 1331 because it arises under the Constitution and the amount in controversy exceeds \$10,000; and by the doctrine of ancillary jurisdiction.

B. Jurisdiction against the defendant Secretary of the Department of Health, Education and Welfare is imparted by 28 U.S.C. § 1361, because plaintiffs request relief in the nature of mandamus and 28 U.S.C. § 1331 because it arises under the Constitution and the amount in controversy exceeds \$10,000.

III PARTIES

A. Plaintiffs Roger and Arlene Derosia are citizens of the United States and the State of Vermont and residents of Swanton, Vermont. Plaintiffs Larry, Harold, Arthur, Mary and Brian Derosia are the minor children of Roger and Arlene Derosia and sue in their own behalf.

B. Defendant Richardson is the Secretary of the United States Department of Health, Education and Welfare. Pursuant to 42 U.S.C. § 602(b), he is authorized to approve state plans for the implementation of ANFC.

C. Defendant Betit is Commissioner of the Vermont Department of Social Welfare. Pursuant to 33 V.S.A. § 2505, he is the chief administrator and executive officer. Through his agents, the plaintiffs and the class they represent have been denied ANFC benefits.

D. Plaintiff Roger Derosia was employed by the O.C. McCuin Company of Highgate Center, Vermont, for three years. His employment was terminated on August 25, 1972. On October 25, 1972, an application was made for ANFC-UF. The application was granted retroactive to September 24, 1972. The amount of the ANFC-UF grant was \$394.

On November 6, 1972, Mrs. Derosia notified the Welfare Department that they had begun receiving state unemployment compensation in the amount of \$56 per week. Pursuant to 42 U.S.C. § 607(b)(2)(c)(ii) and F.S.P.M. 2331.31(3), the ANFC-UF grant was terminated effective December 1, 1972. The difference in income to the family is \$153.20 per month.

IV STATEMENT OF CLAIM

A. The Social Security Act (42 U.S.C. §§ 606 and 607) provides for assistance to needy families with dependent children if the children have been deprived of parental support or care due to death, abandonment, physical or mental incapacity or unemployment of a parent.

B. Section 607(b)(2)(c)(ii) of the Social Security Act provides that assistance under the aid to families

with dependent children program for unemployed parents cannot be granted if the father is receiving unemployment compensation. Aid must be denied for any week in which the father received unemployment compensation regardless of the amount and of the unmet need of the family. Section 2331.31(3) of the Vermont Welfare Manual implements this requirement for Vermont.

The needs of the plaintiffs for a minimum subsistence compatible with health and decency are computed by the Department of Social Welfare and appear in the Vermont Welfare Manual at Section 2211.2. The amount received by the plaintiffs under the unemployment compensation program is considerably less than the amount the Department has adopted as the minimum necessary for a decent and healthful subsistence.

42 U.S.C. § 607(b)(2)(c)(ii), 45 C.F.R. §§ 233.100(a)(5)(ii) and 233.100(c)(v)(b), and Vermont Welfare Regulation 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments for the following reasons:

1. Section 607 creates two classes of children whose fathers are unemployed, those whose fathers are receiving state unemployment compensation and those who are not. Needy children are excluded solely because their fathers receive unemployment compensation benefits even though such benefits may be far below what would otherwise be received under public assistance. Plaintiffs would be eligible for assistance if they were receiving amounts equal to their unemployment benefits in any other form of income or benefits. Having eligibility turn on the source of the income rather than the amount constitutes an invidious discrimination against the former group of children.

2. 42 U.S.C. § 606 provides ANFC eligibility for children who are deprived of parental support or care due to continued absence of one parent from the home. Eligibility under section 606 does not depend upon whether the parent in the home is receiving unemployment or not. Thus, the same children who are ineligible under section 607 because the father is receiving unemployment would

be eligible for ANFC under section 606 if either parent deserted the family. The statutory scheme which penalizes children because their parents are not separated is arbitrary and invalid under the ninth, fifth and fourteenth amendments.

Subparagraphs 1 and 2 above are equally applicable to 45 C.F.R. §§ 233.100(a)(5)(ii) and 233.100(c)(v) (b) and to Vermont Welfare Regulation 2331.31(3).

V. CLASS ACTION

Plaintiff's represent the class of those families residing in the State of Vermont who are eligible for the ANFC-UF program but for their fathers' receipt of or eligibility for unemployment compensation and as a result of this exclusion from ANFC are receiving assistance insufficient to meet their needs. Plaintiffs sue on behalf of themselves and all others similarly situated, pursuant to Rule 23, F.R.C.P.:

(a) The members of this class are so numerous that joinder of them all is impracticable.

(b) There are questions of law and fact common to all members of the class, and the common questions of law and fact predominate over any questions effecting only individual members of the class.

(c) The claims of the representative plaintiffs will fairly and adequately protect the interests of the class.

(d) Defendants have acted or refused to act on grounds generally applicable to the class.

(e) An adjudication of the rights of the named representatives of the class would, as a practical matter, be dispositive of the interests of all other members.

VI. THREE JUDGE COURT

The plaintiffs request that this action be heard by a three judge district court pursuant to 28 U.S.C. §§ 2281 and 2282 because plaintiffs seek a permanent injunction against the enforcement of an act of Congress and the

regulations of statewide applicability on the ground that they are repugnant to the Constitution.

VII. PRAYER FOR RELIEF

Wherefore, the plaintiffs respectfully pray that:

1. This court assume jurisdiction of this cause and convene a three judge court pursuant to Title 28, U.S.C. §§ 2281, 2282 and 2284;

2. This court issue an order declaring that this is an appropriate class action and granting plaintiffs leave to proceed with this action as a class action;

3. The court declare 42 U.S.C. § 607(b) (2) (c) (ii) and 45 C.F.R. §§ 233.100(a) (5) (ii) and 233.100(c) (v) (b) in violation of the due process clause of the fifth amendment and enjoin its enforcement as to plaintiffs and the class they represent;

4. The court declare Vermont Welfare Regulations 2331.31(3) in violation of the equal protection clause of the fourteenth amendment and enjoin its enforcement as to the plaintiffs and the class they represent;

5. That the Vermont Commissioner of Social Welfare be enjoined to pay retroactive benefits to the plaintiffs and the class they represent in the same amount that they would have been paid under 42 U.S.C. § 606;

6. That a writ in the nature of mandamus issue against the secretary of the Department of Health, Education and Welfare ordering him to approve the Vermont ANFC-UF plan without requiring it to contain a provision based on 42 U.S.C. § 607(b) (2) (c) (ii);

7. Grant such further relief as the court may deem just and appropriate.

ROGER C. DEROSIA; ARLENE M. DEROSIA
LARRY DEROSIA, HAROLD DEROSIA, ARTHUR
DEROSIA, MARY DEROSIA, BRIAN DEROSIA

By /s/ Richard S. Kohn
Richard S. Kohn
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vermont 05819
Attorney for Plaintiffs

Dec. 11, 1972.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CHAMBERS OF

JAMES L. OAKES
Circuit Judge

Brattleboro, Vermont 03301

March 6, 1973

Richard S. Kohn, Esq.
Vermont Legal Aid, Inc.
St. Johnsbury, Vermont 05819
Benson Scott, Esq.
Assistant Attorney General
Montpelier, Vermont 05602
William Gray, Esq.
Assistant United States Attorney
Rutland, Vermont 05701

Re Glodgett v. Betit, Civil No. 6550

Gentlemen:

In your respective exchange of briefs, would you please tell us (1) if a husband is working but his earnings are

less than the amount he (and his family) would be entitled to under the ANFC or AFDC programs, would the difference between his wages and the amount of family need be paid under present welfare statutes and regulations; and (2) if the answer to the first question is in the affirmative, how does the Government rationalize such treatment of a family with a working father with the treatment of a family with an unemployed father who presumably is receiving only half of his weekly wages as unemployment compensation; and (3) if the answer to the first question is in the negative, on what basis is such payment not made?

We assume that Mr. Gray will communicate this request to Mr. LaPrade, and that Mr. Kohn will similarly communicate it to Ms. Kaufman.

Very truly yours,

/s/ James L. Oakes
James L. Oakes
U.S. Circuit Judge

cc Hon. James S. Holden
Hon. Albert W. Coffrin
Hon. Edward J. Trudell

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed March 16, 1973]

[Title Omitted in Printing]

MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT

Plaintiff moves the court for leave to file an amended complaint, a copy of which is hereto attached as Exhibit A on the ground that the issue raised by the amended pleading may permit the court to avoid decision of a constitutional question.

/s/ Richard S. Kohn
Richard S. Kohn
Attorney for Plaintiffs
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vermont

March 13, 1973

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed April 19, 1973]

[Title Omitted in Printing]

ORDER

Upon consideration of motion to file amended complaint of the above named plaintiff intervenors, filed March 16, 1973, it is hereby ORDERED:

Motion granted.

Dated this 2nd day of April, 1973.

/s/ James L. Oakes
James L. Oakes
United States Circuit Judge

/s/ James S. Holden
James S. Holden
Chief United States District Judge

/s/ Albert W. Coffrin
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed October 3, 1973]

[Title Omitted in Printing]

MOTION TO INTERVENE

Now come Robert and Tiana Spicer, and Samantha and Stephanie Perry, minor children of Tiana Spicer, by their attorneys, Kathleen M. Mitchell and Vermont Legal Aid, Inc., pursuant to Rule 24(b) and (c), Federal Rules of Civil Procedure, to move this Honorable Court to permit them to intervene in the above case. In support of their motion herein, said parties stipulate and certify as follows:

1. That they reside in Springfield, Windsor County in the State of Vermont.

2. That their claims against the above defendants present questions of law and/or facts in common with the original plaintiffs' main action in that the intervenors are deprived of ANFC-UF because the father is receiving state unemployment compensation, which is much lower than the ANFC benefits. (Please see Intervenor's complaint which is attached hereto.)

3. That their intervention in the above cause will not unduly delay or prejudice the adjudication of the rights of the original parties.

Dated at Springfield in the County of Windsor and State of Vermont this 28th day of September, 1973.

/s/ Kathleen M. Mitchell
Kathleen M. Mitchell
Vermont Legal Aid, Inc.
15 South Street
Springfield, Vermont 05156
Attorney for Intervenors

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed November 6, 1973]

[Title Omitted in Printing]

MOTION FOR RE HEARING ON DISMISSAL
OF THE CLASS ACTION

Plaintiffs move the court for a re-hearing on the question of the dismissal of the class aspect of the above captioned case for the reasons (1) that the court should not have dismissed plaintiffs' request for designation of their action as a class suit without a hearing, and (2) that under F.R.Civ.P. 56(d) the court should have denied summary judgment on the question of class relief and set that issue for trial. Plaintiffs seek a modification of the court's opinion to enable them to present evidence on the scope of the class and for the purpose of determining what shall constitute notice to the members of the class pursuant to F.R.Civ.P. 23(c).

Dated: November 4, 1973

/s/ Richard S. Kohn
Richard S. Kohn
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vt.
Attorney for the plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed December 17, 1973]

[Title Omitted in Printing]

MOTION FOR NEW TRIAL

Defendant moves the court to set aside the findings of fact and conclusions of law entered herein on the twenty-third day of October, 1973; and to grant defendant a new trial under F.R. Civ. P. 59(a) on the grounds that the Court erred in:

- (1) Ruling that they could not find anything in the legislative history to prohibit giving an individual the option of UCC or ANFC-UF;
- (2) Affording an individual an option, by the interpretation that 42 USC 605 provides for the protection and similar treatment to those individuals who receive outside income; and
- (3) Not allowing counsel the opportunity to brief the option position.

Defendant seeks a new trial to enable them to show how the opinion of the twenty-third day of October, 1973, will cause irreparable financial harm to the defendant.

/s/ David L. Kalib
DAVID L. KALIB
Assistant Attorney General
State of Vermont
State Office Building
Montpelier, Vermont
Attorney for the Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed January 18, 1974]

[Title Omitted in Printing]

MOTION TO INTERVENE AND FOR
TEMPORARY RELIEF

Now come Tina, William and Sean Sarazin, minor children of Mary and William Sarazin, by their attorneys, Mary Just Skinner and Vermont Legal Aid, Inc., pursuant to Rule 24(b) and (c), Federal Rules of Civil Procedure, to move this Honorable Court to permit them to intervene in the above case. In support of their motion herein, said parties stipulate and certify as follows:

1. That they reside in Barre, Washington County in the State of Vermont.
2. That their claims against the above defendants present questions of law and/or facts in common with the original plaintiffs' main action in that the intervenors are deprived of ANFC-UF because the father is receiving state unemployment compensation, which is much lower than the ANFC benefits.
3. That their intervention in the above cause will not unduly delay or prejudice the adjudication of the rights of the original parties.

And now comes Tina, William and Sean Sarazin, minor children of Mary and William Sarazin, by their attorneys, Mary Just Skinner and Vermont Legal Aid, Inc., pursuant to Rule 65, Federal Rules of Civil Procedure, to move this Honorable Court to permit them to intervene in the above case. In support of their motion herein, said parties stipulate and certify as follows:

1. That they will suffer immediate and irreparable injury if they are not granted a temporary restraining order in that they will not have sufficient income to support themselves and their family.

2. That they will suffer irreparable injury if they are not granted a temporary restraining order in that their monthly income will be approximately half of the standard of need set by the Vermont Department of Social Welfare to meet a family's minimum needs.

3. No undue delay or hardship will result to the defendants in that this Court has already held that an individual eligible for both state unemployment compensation benefits and an Aid to Families with Needy Children-Unemployed Father grant, (ANFC-UF) has the option to choose receipt of benefits from the program that yields more income.

4. Justice and equity require the granting of this motion.

5. There is a likelihood that they will prevail on the merits.

6. Such other grounds as may appear on oral argument.

Dated this 16th day of January, 1974 in Montpelier, Vermont.

/s/ Mary Just Skinner
Mary Just Skinner, Esq.
Vermont Legal Aid, Inc.
26 State Street
Montpelier, Vermont 05602

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed January 18, 1974]

[Title Omitted in Printing]

AFFIDAVIT

William Sarazin, being duly sworn, deposes and states:

1. He resides at 9 Bugbee Avenue, Barre, Vermont with his wife Mary and three minor children, William, Jr., 11 years, Tina, Ten years, and Sean, 9 months.

2. On December 7, 1973, he was laid off his job as window cleaner at Stanley E. Leszko, Window Cleaner, RFD #3, Barre, Vermont. Prior to being laid off, he earned \$67.80 net per week. At that time he had only himself, his wife and his son Sean to support.

3. On or about December 26, 1973, he applied for an ANFC-UF grant at the Barre District office of the Vermont Department of Social Welfare. At that time he was told that he was eligible as of January 10, 1974 for ANFC-UF benefits in the amount of \$332.00 per month.

4. On January 10, 1974, he returned to the Barre District office and was told that he would not receive ANFC-UF benefits because he had received on that date a state unemployment compensation check in the amount of \$40.00.

5. If he continues to receive only \$40 per week from state unemployment compensation benefits his total income per month will be \$160.00 from unemployment compensation plus approximately \$60.00 per month part-time work from his former employer.

6. At the present time his expenses are approximately as follows:

rent—\$65 per month

food—\$35 per week (\$150 a month)

car payments—\$10 per week (\$242 owed)

hospital bill—\$10 per month

doctor's bill—\$10 per month (\$200 owed)

7. He planned to move to a larger apartment in early January, 1974 to accommodate his family. He has been forced to move in with his mother and her grandchild and to share expenses with her because he could not afford his own apartment. He had already contracted to take an apartment at Highgate Apartments in Barre, Vermont but when he found out he would not get an ANFC-UF grant he could not afford to make the move.

8. He bought a used car for \$250.00 to get to work. It broke down and had to be towed to a repair shop. He has to pay \$70.00 in repair and towing charges before he can get the car back. Without this car he has no regular way to get to his part-time work at various locations.

9. At the present time he is unable to support his family on \$160.00 a month from unemployment compensation and from his part-time work. He cannot feed his family and pay his rent and make payments on his debts. Without his car he may not be able to continue his part time work.

10. He and his family will suffer irreparable damage because they don't have sufficient money to live on. He would be better able to meet the needs of himself and his family on the \$332.00 per month ANFC-UF benefits.

Dated this 17th day of January, 1974 in Montpelier, Vermont.

/s/ William Sarazin
William Sarazin

Subscribed and Sworn to before me this 17th day of January, 1974

/s/ Anne Cheoldi
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed January 23, 1974]

[Title Omitted in Printing]

AMENDED COMPLAINT OF INTERVENTION

I. This is a suit for a declaratory judgment that 42 U.S.C. Section 607(b)(2)(c)(ii); 45 C.F.R. Sections 223.100(a)(5)(ii) and 233.100(c)(v)(b); and Vermont Welfare Regulation 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments to the United States Constitution insofar as they render children of unemployed fathers ineligible to receive ANFC benefits during any week that the father is receiving unemployment compensation under state unemployment compensation law. The action against the Commissioner of Social Welfare is based on 42 U.S.C. Section 1983. Plaintiffs also seek damages and injunctive relief against the Commissioner of Vermont Department of Social Welfare and relief in the nature of mandamus as against the Secretary of the Department of Health, Education and Welfare.

II. JURISDICTION

A. Jurisdiction against the Commissioner of the Vermont Department of Social Welfare is invoked pursuant to 28 U.S.C. Section 1343(3)-(4) because it is brought to redress the deprivation under color of state law of a right secured by the fourteenth amendment; by 28 U.S.C. Section 1331 because it arises under the Constitution and the amount in controversy exceeds \$10,000; and by the doctrine of ancillary jurisdiction.

B. Jurisdiction against the Defendant Secretary of the Department of Health, Education and Welfare is imparted by 28 U.S.C. Section 1361, because plaintiffs request relief in the nature of mandamus and 28 U.S.C.

Section 1331 because it arises under the Constitution and the amount in controversy exceeds \$10,000.

III. PARTIES

A. Plaintiffs Mary and William Sarazin are citizens of the United States and the State of Vermont and residents of Barre, Vermont. Plaintiffs William Jr., Tina and Sean are the minor children of William and Mary Sarazin and sue in their own behalf.

B. Defendant Weinberger is the Secretary of the United States Department of Health, Education and Welfare. Pursuant to 42 U.S.C. Section 602(b), he is authorized to approve state plans for the implementation of ANFC.

C. Defendant Philbrook is Commissioner of the Vermont Department of Social Welfare. Pursuant to 33 V.S.A. Section 2505, he is the chief administrator and executive officer. Through his agents, the plaintiffs and the class they represent have been denied ANFC benefits.

D. Plaintiff William Sarazin became unemployed on or about December 7, 1973. On or about December 26, 1973, the application was made for ANFC-UF. He was told that as of January 10, 1974, he would be eligible for ANFC-UF in the amount of \$332.00 per month for his family of five.

E. On January 10, 1974, Mr. Sarazin went back to the welfare office where he was told he was not eligible for the ANFC-UF program because he had drawn a state unemployment compensation check in the amount of \$40.00. He never received a written notice that he was not eligible for ANFC-UF grant. The difference in income to the family is \$172.00 per month.

F. Mr. Sarazin stands ready to forego his state unemployment compensation check in the amount of \$40.00 per week (\$160.00 per month) to receive \$332.00 per month from the Welfare Department.

IV. STATEMENT OF CLAIM

A. The Social Security Act (42 U.S.C. Sections 606 and 607) provides for assistance to needy families with dependent children if the children have been deprived of parental support or care due to death, abandonment, physical and mental incapacity or unemployment of parent.

B. Section 607(b)(2)(c)(ii) of the Social Security Act provides that assistance under the aid to families with dependent children program for unemployed parents cannot be granted if the father is receiving unemployment compensation. Aid must be denied for any week in which the father receives unemployment compensation regardless of the amount and of the unmet need of the family. Section 2331.31(3) of the Vermont Welfare Manual implements this requirement for Vermont.

The needs of the plaintiffs for a minimum subsistence compatible with health and decency are computed by the Department of Social Welfare and appear in the Vermont Welfare Manual at Section 2211.2. The amount received for the plaintiffs under the unemployment compensation program is considerably less than the amounts the Department has adopted as the minimum necessary for a decent and healthful subsistence.

42 U.S.C. Section 607(b)(2)(c)(ii), 45 C.F.R. Section 233.100(a)(5)(ii) and Vermont Welfare Regulations 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments for the following reasons:

A. Section 607 creates two classes of children whose fathers are unemployed: those whose fathers were receiving state unemployment compensation and those who are not. Needy children are excluded solely because their fathers receive unemployment compensation even though such benefits may be far below what would otherwise be received under public assistance. Plaintiffs would be eligible for assistance if they were receiving amounts equal to their unemployment benefits in any other form of income or benefits. Disqualifying families from ANFC-UF

because the father receives unemployment compensation constitutes an invidious discrimination.

B. 42 U.S.C. Section 607(b)(2)(c)(ii) is unconstitutional because it only disqualifies those children whose fathers are receiving unemployment compensation. This is an arbitrary distinction conditioned solely on which parent is receiving unemployment.

C. 42 U.S.C. Section 606 provides ANFC eligibility for children who are deprived of parental support or care due to continued absence of one parent from the home. Eligibility under section 606 does not depend upon whether the parent in the home is receiving unemployment or not. Thus, the same children who are ineligible under Section 607 because the father is receiving unemployment compensation would be eligible for ANFC under Section 606 if either parent deserted the family. A statutory scheme which penalizes children because their parents are not separated is arbitrary and invalid under the ninth, fifth and fourteenth amendments.

Subparagraphs A, B and C above are equally applicable to 45 C.F.R. Section 233.100 and Vermont Welfare Regulation, 233.31(3).

D. Vermont Welfare Regulation 233.31(3), as applied, violates 42 U.S.C. Section 607(b)(2)(c)(ii) and 45 C.F.R. Section 233.100(a)(5)(ii) because it is interpreted to disqualify families in which the father is eligible to receive unemployment compensation as well as those in which the father is actually receiving unemployment compensation.

V. PRAYER FOR RELIEF

Wherefore, the plaintiffs respectfully pray that:

1. This Court allow plaintiffs to intervene in this cause;
2. The Court declare 42 U.S.C. Section 607(b)(2)(c)(ii) and 45 C.F.R. Section 233.100(a)(5)(ii) and 233.100(c)(v)(b) in violation of the due process clause of the fifth amendment and enjoin its enforcement as to plaintiffs;

3. The Court declare Vermont Welfare Regulation 2331.31(3) in violation of the equal protection clause of the fourteenth amendment and enjoin its enforcement as to the plaintiffs;

4. That the Vermont Commissioner of Social Welfare be enjoined to pay retroactive benefits to the plaintiffs in the same amount that they would have been paid under 42 U.S.C. Section 606;

5. That a writ in the nature of mandamus issue against the Secretary of the Department of Health, Education and Welfare ordering him to approve the Vermont ANFC-UF plan without requiring it to contain a provision based on 42 U.S.C. Section 607(b)(2)(c)(ii);

6. That the Court interpret 42 U.S.C. Section 607(b)(2)(c)(ii) to disqualify families from ANFC-UF benefits only for any week in which the father is actually receiving unemployment compensation.

7. Grant such further relief as the court may deem just and appropriate.

WILLIAM SARAZIN, MARY
SARAZIN

By: /s/ Mary Just Skinner
Mary Just Skinner, Esquire
Vermont Legal Aid, Inc.
26 State Street
Montpelier, Vermont 05602

VERIFICATION

We solemnly swear that We have read the above Complaint and know the contents thereof, and that the same is true to the best of our knowledge, except the matters stated on my information and belief, and that as to those matters We believe them to be true.

/s/ William Sarazin
William Sarazin

/s/ Mary Sarazin
Mary Sarazin

Subscribed and Sworn to before me this 16th day of
January, 1974,

/s/ Mary Just Skinner
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed January 25, 1974]

[Title Omitted in Printing]

STIPULATION

Plaintiff-intervenors Mary and William Sarazin, individually and on behalf of their minor children Tina, William, Jr. and Sean, by and through their attorney Mary Just Skinner, Esquire and Vermont Legal Aid, Inc., and defendant Paul Philbrook (originally Joseph Betit) by and through his attorney David Kalib, Esquire, hereby agree and stipulate as follows:

1. Plaintiff-intervenor shall forego receipt of further state unemployment compensation benefits after January 24, 1974.
2. Defendant shall grant plaintiff ANFC-UF benefits as of January 28, 1974 until plaintiff ceases to be eligible for such benefits.
3. Defendant waives the requirement of posting the bond of fifty dollars (\$50) set by the Court on January 23, 1974.
4. Upon the Court's entry of a final judgment in the case at bar plaintiff-intervenor shall become a member of the class covered by this Court's Orders of October 17, 1973 and December 28, 1973, and shall be subject to any further order of the Court staying the effect of such final judgment. In no event shall the merger of plaintiff-intervenor into the class covered by the Court's final judgment cause any hiatus in the receipt of ANFC-UF benefits to plaintiff-intervenor so long as he remains eligible for such benefits.

Dated at Montpelier, Vermont this 24th day of January, 1974.

/s/ David Kalib
David Kalib, Esquire
for Defendant Paul Philbrook

/s/ Mary Just Skinner
Mary Just Skinner, Esquire
for plaintiff-intervenors,
William and Mary Sarazin,
individually and on behalf
of their minor children,
Tina, William, Jr. and
Sean Sarazin

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed January 25, 1974]

[Title Omitted in Printing]

ORDER

Plaintiffs having moved this Court pursuant to Rules 24(b) and (c), and 65, Federal Rules of Civil Procedure, for a leave to intervene in the case at bar and for a temporary restraining order restraining Paul Philbrook (originally Joseph Betit) and Elliot Richardson from refusing to grant Plaintiff Aid to Families with Needy Children-Unemployed Father benefits (ANFC-UF) solely on the ground that he is receiving unemployment compensation benefits from the State of Vermont. This motion having been considered by this Court:

Upon the verified complaint, affidavit, and memorandum submitted on behalf of the parties, upon hearing on January 24, 1974, upon the finding by this Court that:

- 1) Plaintiffs' claims against the defendants present questions of law and fact in common with the original plaintiffs main action;
- 2) Plaintiffs' intervention will not unduly delay the case at bar;
- 3) Plaintiffs are now suffering irreparable damage by being denied ANFC-UF benefits; and
- 4) Plaintiffs are likely to prevail on the merits in the case at bar, and upon stipulation of the parties that plaintiff-intervenor William Sarazin shall forego receipt of further state unemployment compensation benefits after January 24, 1974, that defendant Vermont Department of Social Welfare shall grant plaintiffs ANFC-UF benefits as of January 28, 1974 until plaintiffs cease to be eligible for such benefits; that defendant Department of Social Welfare waives the requirement of posting the bond of fifty dollars (\$50) set on January 23, 1974,

and that entry of a final judgment order in the case at bar shall result in plaintiff-intervenors merger into the class of persons covered by the Orders of October 17, 1973 and December 28, 1973, whereupon plaintiff-intervenors shall be subject to any further order of the court staying the effect of such final judgment, it is

ORDERED, ADJUDGED AND DECREED THAT:

Plaintiff-intervenors William and Mary Sarazin, individually and on behalf of their minor children Tina, William, Jr. and Sean Sarazin are hereby intervened as party-plaintiffs in the instant case and defendants, their successors in office, agents, and employees, and all other persons in active concert with them, are hereby restrained from refusing to grant Plaintiff ANFC-UF benefits as of January 28, 1974 for so long as Plaintiff remains eligible and foregoes receipt of Vermont unemployment compensation benefits.

Dated at Rutland, Vermont this 25th day of January, 1974.

/s/ James S. Holden
Judge James S. Holden
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed February 26, 1974]

[Title Omitted in Printing]

MOTION TO STAY, INCLUDING SUPERSEDEAS
IN DISTRICT COURT

Defendants move this Court to stay the enforcement of its judgment in this action pending the disposition of defendants' appeal to the United States Supreme Court.

/s/ David L. Kalib
DAVID L. KALIB
Assistant Attorney General
Office of the Attorney General
Montpelier, Vermont 05602
(802) 828-3445

Attorney for Appellants/Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed February 26, 1974]

[Title Omitted in Printing]

AFFIDAVIT

ROBERT M. SALIBA, being duly sworn and deposed, says:

1. For the last 4½ years, I have been involved in systems and programming with the computer operations for the Vermont Department of Employment Security, a position I currently maintain. Prior to that time, I have had programming experience with the Vermont Highway Department and I have attended courses of instruction in programming with the International Business Machine Corporation.

2. At the request of the Commissioner for the Department of Social Welfare, I have prepared a study on the average weekly claim load of the Department of Employment Security. The purpose of this study is to determine the number of individuals potentially eligible, concurrently, for both unemployment insurance and Aid to Needy Families—Unemployed Father benefits. The information for this study came from Departmental weekly reports which are submitted by local offices from their claims files.

3. The findings of the study are as follows:

a. During the calendar year 1973, the total number of claims filed was 268,270, or an average weekly total of 5159.

b. In order to determine the number of individuals potentially eligible concurrently for both ANFC-UF welfare and unemployment benefits, I had our computer sort into two categories the first 5200 claimants [rounding 5159—the average number of claimants at any given period] who have received at least one payment and who have entered the file subsequent to

June 30, 1973, the date dependency information was entered on the files. The first category of the 5200 is made up of those individuals presumably ineligible for ANFC-UF (i.e. anyone with no dependents, or one dependent, [who is presumed to be a spouse], or any female claimant). The second category is made up of those who are potentially eligible for ANFC-UF benefits, namely those families headed by males with two or more dependents.

c. It was found on two separate computer runs, (January 25, 1974 and January 31, 1974) that of the first fifty-two hundred (5200) names, as calculated in a. above, approximately fifteen hundred (1500) [In actuality the January 25 run revealed 1496 potentially eligible, while the January 31 run showed 1480 potential eligibles] would fall into the potentially eligible group.

The attached results accurately reflect the content of our file on January 25 and January 31, 1974.

/s/ Robert M. Saliba
ROBERT M. SALIBA

Subscribed and Sworn to before me this 15th day of February, 1974.

/s/ David Kalib
Notary Public

REQUEST REPORT FOR UI DIRECTOR

01/25/74

CLAIMANT SAMPLE SIZE 5200

NO. OF FEMALES	= 1580	
NO. OF MALES 0 DEPS	= 1409	
NO. OF MALES 1 DEPS	= 715	
NO. OF MALES 2 DEPS	= 473	AVE WBA = 72
NO. OF MALES 3 DEPS	= 428	AVE WBA = 74
NO. OF MALES 4 DEPS	= 331	AVE WBA = 74
NO. OF MALES 5 DEPS	= 264	AVE WBA = 74

REQUEST REPORT FOR UI DIRECTOR

01/31/74

CLAIMANT SAMPLE SIZE 5200

No. of Females	= 1584	
No. of Males 0 Deps	= 1427	
No. of Males 1 Deps	= 709	
No. of Males 2 Deps	= 450	Ave WBA = 72
No. of Males 3 Deps	= 429	Ave WBA = 74
No. of Males 4 Deps	= 324	Ave WBA = 74
No. of Males 5 Deps	= 277	Ave WBA = 74

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed February 26, 1974]

[Title Omitted in Printing]

AFFIDAVIT

LAWRENCE MASTERSON, being duly sworn, deposes and says:

1. I am Agency Principal Accountant, responsible for financial reports and projects of the Department of Social Welfare.

2. I, as Principal Accountant, have had the responsibility for preparing and working with the Department of Social Welfare's budget since 1969.

3. From time to time, I have been requested, and as part of my normal responsibilities I have provided, information to various individuals with respect to the Department's budget.

4. In the normal course of my employment responsibilities, I have prepared an analysis of the Department's budget expenditure and projected expenditures for both the first half of fiscal year 1974 and the entire fiscal year 1974, respectively.

5. The results of this analysis are as follows:

a. The Department's latest projection of expenditures for FY 74 is \$55,185,210.

b. From July 1, 1973 through December 31, 1973, it was projected that the Department would spend \$28,440,000 or 51.5% of the total budget. The actual expenditures during this period were \$27,920,000.

c. The projected expenditure for the period January 1, 1974 to June 30, 1974 is \$27,265,500.

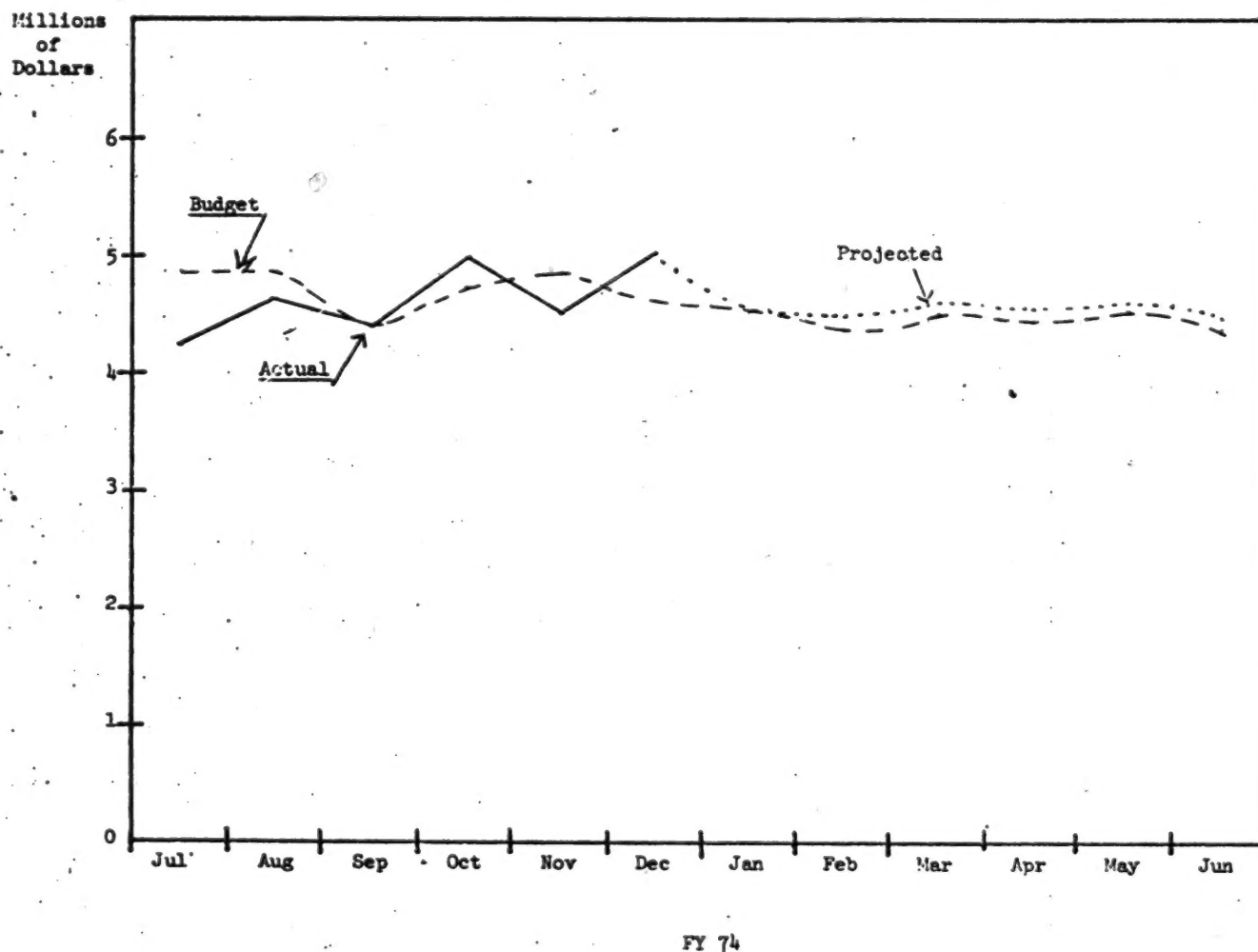
6. The attached graph accurately reflects the expenditures for the first half of the fiscal year and projected expenditure for the balance of this fiscal year.

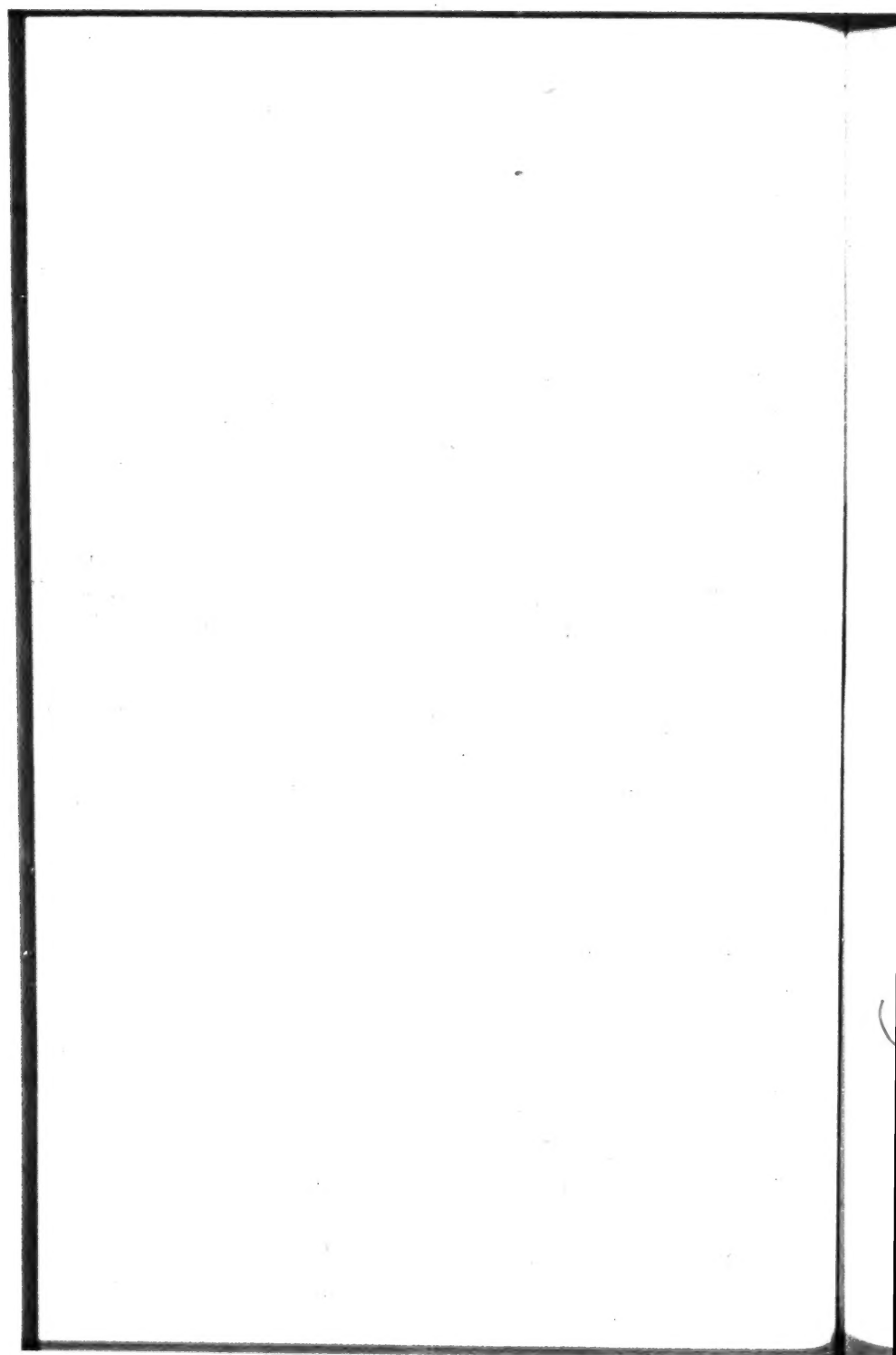
/s/ Lawrence Masterson
LAWRENCE MASTERSON

Subscribed and Sworn to before me this 14th day of
February, 1974.

/s/ David Kalib
Notary Public

Dept. of Social Welfare - Expected Monthly Expenditure Pattern of FY 74 Gross Budget, Minus GA Hospital,
with Actual Monthly Expenditures thru December and Projected Monthly Expenditures January thru June





UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed February 26, 1974]

[Title Omitted in Printing]

AFFIDAVIT

PAUL R. PHILBROOK, being duly sworn, deposes and says:

1. I am Commissioner of the Vermont Department of Social Welfare and am charged by 33 VSA § 2505 with the full responsibility for operation of the Department.

2. I, as Commissioner, have the duty to administer laws applicable to the Department and to fix standards and to promulgate regulations necessary to administer those laws.

3. I am charged with the responsibility, pursuant to 33 VSA 2501(4), to comply with intent of the legislature to maintain a reasonable standard of health and decency based on current cost of living indexes.

4. I am further charged with the responsibility pursuant to 33 VSA § 2554 to allocate payments of assistance when the appropriations are insufficient, and am not authorized to incur a deficit.

5. I have adjusted assistance standards during fiscal year 1974 to reflect the increased cost of living. Because overall funding in the Department is not sufficient to fully meet the revised standards, payments are being made at 90% of the updated standard.

6. Based upon the information supplied to me from the Department of Employment Security, it is my opinion that at least one-half ($\frac{1}{2}$) or seven hundred and fifty (750) of the estimated fifteen hundred (1500) families (with two or more dependents) that are receiving unemployment benefits would be eligible and choose to accept an ANFC-UF welfare grant during FY 75.

7. Based upon the present average grant of \$327 per month per family for ANFC-UF families, I estimate that

these 750 families will increase the Department's expenditures during FY 75 by \$245,250 per month, or \$2,943,000 per year, of which \$1,018,866 is state funds.

8. With respect to FY 74, if Department expenditures continue as currently projected, funding would not be sufficient to continue payments in all programs at present levels. Before reducing assistance grants, I would seek additional funding from the Emergency Board of state government. If such funds were unavailable or not forthcoming, a reduction in payments under one or more Department programs would be necessary.

9. With respect to FY 75 (Beginning July 1, 1974), the projected expenditure levels included in the Department budget now being considered by the Vermont General Assembly do not contemplate this additional caseload. If a stay is not granted and Department FY 75 expenditures proceed as currently projected, FY 75 appropriations would not be sufficient to cover the cost of these additional 750 families. I would be obliged to request a supplemental appropriation of the 1975 Vermont General Assembly. If that request were not granted, a reduction in payments under one or more department programs would be necessary.

10. If a stay is granted, pending a final decision by the U.S. Supreme Court, I shall be able to plan for an eventual increase in budget, assuming the lower court decision is affirmed.

/s/ Paul R. Philbrook
PAUL R. PHILBROOK

Subscribed and Sworn to before me this 14th day of February, 1974.

/s/ Dorothy E. Puente
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed March 15, 1974]

[Title Omitted in Printing]

STAY OF JUDGMENT

Upon the basis of the memoranda, and the arguments of counsel on March 1, 1974, it is ordered, adjudged and decreed that:

1. Except for the above-named plaintiffs, whose judgment is to be satisfied, the judgment order with respect to all those similarly situated individuals, who would qualify for the ANFC-UF option, is hereby conditionally stayed.

2. The stay is conditioned as follows:

(a) All those who would be eligible for ANFC-UF benefits but for the receipt of unemployment compensation (UC) benefits, shall be permitted to apply for and receive supplemental financial assistance from the Department of Social Welfare (DSW) after they have been found eligible to receive UC.

(b) The amount of the supplemental assistance shall be the difference between the UC benefits received (or to be received after the mandatory one-week waiting period prescribed in 21 V.S.A. Sec. 1343(4), together with other earned or unearned income, and the amount the applicant would be entitled to receive had he been eligible under the ANFC-UF program.

(c) The amount of supplemental assistance shall be calculated and paid for the month in which application for the supplemental assistance is filed.

3. The Department reserves the option of granting ANFC-UF to a particular family where the family is eligible for ANFC-UF but for the receipt of UC, and where it would be in the financial best interest of the Department to do so. Such an arrangement can only be

made with the consent of the recipient and his willingness to forego his UC benefits in favor of ANFC-UF. It is the intent of this order to provide the same financial assistance to the applicant irrespective of which program he so chooses.

4. Those individuals found eligible for benefits under paragraph (2) above shall also be eligible for medicaid payments as if they were eligible for and receiving ANFC-UF.

5. All recipients under the terms of this conditional stay shall be afforded the right to notice, hearing and all other procedural safeguards available to recipients of ANFC-UF under appropriate state and federal regulations as concern the granting, modification, continuance or termination of benefits.

6. This stay order shall continue in force until the merits are decided on appeal by the United States Supreme Court or until further order of this court.

DATED at _____ in the District of Vermont, this 15th day of March, 1974.

SO ORDERED.

/s/ James L. Oakes
U.S. Circuit Judge

/s/ James S. Holden
U.S. District Judge

/s/ Albert W. Coffrin
U.S. District Judge

SUPREME COURT OF THE UNITED STATES

No. 73-1820

PAUL R. PHILBROOK, ETC., APPELLANT

v.

JEAN GLODGETT, ET AL.

APPEAL from the United States District Court for the District of Vermont.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 74-132 and a total of one hour is allotted for oral argument.

October 29, 1974

SUPREME COURT OF THE UNITED STATES

No. 74-132

CASPAR W. WEINBERGER, Secretary of Health,
Education and Welfare, APPELLANT

v.

JEAN GLODGETT, ET AL.

APPEAL from the United States District Court for
the District of Vermont.

The statement of jurisdiction in this case having been
submitted and considered by the Court, further con-
sideration of the question of jurisdiction is postponed to
a hearing of the case on the merits. The case is con-
solidated with No. 73-1820 and a total of one hour is
allotted for oral argument.

October 29, 1974

PAUL PHILBROOK,
APPELLANT

TABLE OF CONTENTS

	Page
Introductory Statement	1
Opinion Below	2
Jurisdiction	2
Statute and Regulation Involved	3
Question Presented	4
Statement of the Case	4
1. Introduction	4
2. Prior Proceedings	6
3. The District Court's Decision	8
The Questions are Substantial	8
The District Court's interpretation that 42 U.S.C. §607(b)(2)(C)(ii) and §2333.1(3) of the Ver- mont Welfare Assistance Manual provide an option whereby a father may reject unemployment com- pensation in order that his family may become eligible for AFDC benefits is erroneous.	9
1. The Court's interpretation creates an irrecon- cilable conflict between the provisions in ques- tion and other relevant provisions of the federal and state AFDC programs.	9
2. The Court's interpretation is contradictory to relevant legislative history.	13
3. The Court's interpretation undermines the tra- ditional separateness of the unemployment compensation program and AFDC.	16
4. The Court's interpretation is in complete con- flict with the decision in <i>Burr v. Smith</i> , 322 F. Supp. 980 (1971), <i>aff'd mem.</i> 404 U.S. 1027 (1972)..	19

(II)

	Page
5. The Court's interpretation produces extraordinary results in that it would (a) shift the clear burden of supporting unemployed fathers and their families from employer contributions to welfare appropriations, (b) unjustly enrich former employers of unemployed fathers, and (c) encourage "program shopping."	20
Conclusion	22
Appendix A — The District Court's Opinion	25
Appendix B — The District Court's order of judgment	41
Appendix C — Notice of appeal	45
Appendix D — 42 U.S.C. §607(b) (2) (C) (ii)	47
Appendix E — §2333.1 of the Vermont Welfare Assistance Manual	51

TABLE OF AUTHORITIES CITED

Cases:

<i>Allen v. State Board of Elections</i> , 393 U.S. 544 (1969)	9
<i>Burr v. Smith</i> , 322 F. Supp. 980 (W. D. Wash. 1971), <i>aff'd mem.</i> 404 U.S. 1027 (1972)	18, 19, 20
<i>California Department of Human Resources Development v. Java</i> , 402 U.S. 121 (1971)	16
<i>Defunis v. Odegaard</i> , 42 U.S.L.W. 4578 (U.S. Apr. 23, 1974)	22
<i>Engineers v. Chicago, R.I. & P. R. Co.</i> , 382 U.S. 423 (1966)	3
<i>Florida Lime & Avocado Growers, Inc. v. Jacobsen</i> , 362 U.S. 73 (1960)	3
<i>Glodgett v. Betit</i> , 368 F. Supp. 211 (1973)	2
<i>Hagens v. Lavine</i> , 94 S. Ct. 1372 (1974)	3
<i>King v. Smith</i> , 392 U.S. 309 (1968)	10

(III)

	Page
<i>Lewis v. Martin</i> , 397 U.S. 552 (1970)	10
<i>Malat v. Riddell</i> , 383 U.S. 569 (1966)	9
<i>NLRB v. Allis Chalmers Mfg. Co.</i> , 388 U.S. 175 (1967)	9
<i>Richards v. United States</i> , 369 U.S. 1 (1962)	9
<i>Shea v. Vialpando</i> , 42 U.S.L.W. 4559 (U.S. Apr. 23, 1974)	10, 12

Statutes:

28 U.S.C. §1253	3
28 U.S.C. §1331	7
28 U.S.C. §1336	7
28 U.S.C. §1343 (3)	2, 7
28 U.S.C. §1343 (4)	7
28 U.S.C. §1361	7
28 U.S.C. §2101 (b)	3
28 U.S.C. §2281	3, 7
28 U.S.C. §2282	3, 7
42 U.S.C. §§601-610	4
42 U.S.C. §602 (a)	5
42 U.S.C. §602 (a) (7)	9, 10, 12
42 U.S.C. §606 (a)	5
42 U.S.C. §607 (a)	5
42 U.S.C. §607 (b) (2) (C) (ii)	2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 16, 18, 19, 20, 22
42 U.S.C. §1983	2, 7
21 V.S.A. §1301 <i>et seq.</i>	21
33 V.S.A. §2504 (b) (3)	2
33 V.S.A. §2505 (c) (2)	2
Act of May, 1961, Pub. L. 87-31, §1, 75 Stat. 75 ..	14
Act of July 25, 1962, Pub. L. 87-543, Title I. §131 (a) 76 Stat. 193	14
Act of June 29, 1967, Pub. L. 90-36, §2, 81 Stat. 94	14

(IV)

	Page
Act of January 2, 1968, Pub. L. 90-248, Title II, §203 (a), 81 Stat. 882	14
Act of June 28, 1968, Pub. L. 90-364, Title III, §302, 82 Stat. 273	14
Regulations:	
45 C.F.R. §233.20 (a) (3) (ii) (c)	11
45 C.F.R. §233.20 (a) (3) (ix)	12
45 C.F.R. §233.100 (a) (5) (ii)	6
§2270 of the <i>Vermont Welfare Assistance Manual</i>	13
§2333.1 of the <i>Vermont Welfare Assistance Manual</i>	2, 4, 6, 7, 8, 9, 12, 22
Miscellaneous:	
107 CONG. REC. 6400-01 (1961)	18
<i>Handbook of Public Assistance Administration</i> ..	10, 11
Part IV §§3120	11
3140 (4)	11
3140 (6)	11
H. R. REP. No. 544, 90th Cong., 1st Sess. (1967) ..	15
H. R. REP. No. 1030, 90th Cong., 1st Sess. (1967) ..	15
<i>Public Assistance Statistics</i> , DHEW publication No. (SRS) 74-03100, NCSS Report A-2 (11/73)	5
S. REP. No. 628, 74th Congress, 1st Sess. (1935) ..	17
S. REP. No. 165, 87th Congress, 1st Sess. (1961) ..	18

In the Supreme Court of the United States

OCTOBER TERM, 1974

No.

PAUL PHILBROOK,
APPELLANT

vs.

JEAN GLODGETT, ET AL.,
APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF VERMONT

JURISDICTIONAL STATEMENT

Appellant Paul Philbrook, successor in office to Joseph Betit as Commissioner of the Vermont Department of Social Welfare,¹ appeals from the order of the three-judge United States District Court for the District of Vermont dated February 21, 1974. This statement is submitted to demonstrate that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

¹ In addition to Joseph Betit, who was named individually and as Commissioner, the defendants below included Elliott Richardson, individually and as Secretary of the United States Department of Health, Education, and Welfare. The plaintiffs included Jean and Deanna Glodgett, individually and on behalf of their minor child Tina; Roger, Sr. and Rosamond Percy, individually and on behalf of their minor children, Sharon, Sheila, Roger, Mary, Matthew, and Charon Percy; and Roger C. and Arlene M. Derosia, individually and on behalf of their minor children, Larry, Harold, Arthur, Mary and Brian Derosia. The named plaintiffs also sued on behalf of all others similarly situated.

OPINION BELOW

The opinion of the United States District Court is reported at 368 F. Supp. 211 (1973), and is attached hereto as Appendix A. The Court's order of judgment, which is not reported, is attached hereto as Appendix B.

JURISDICTION

This suit was brought in the United States District Court for the District of Vermont by appellees on behalf of themselves and all others similarly situated against the Commissioner of the Vermont Department of Social Welfare (the appellant herein) and the Secretary of the United States Department of Health, Education and Welfare. The action against the Commissioner was based on 42 U.S.C. §1983, and sought declaratory and injunctive relief and damages. Jurisdiction of the District Court over both defendants was invoked pursuant to 28 U.S.C. §1343 (3).

Appellees sought a declaration that 42 U.S.C. §607 (b) (2) (C) (ii)² and §2333.1(3) of the Vermont Welfare Assistance Manual³ violate respectively the Due process Clause of the Fifth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment in that they deny benefits to families under the Unemployed Father provisions of the federal-state Aid to Needy Families with

² Section 407(b) (2) (C) (ii) of the Social Security Act of 1935, as amended, 82 Stat. 273. Since the District Court's opinion was written in terms of §607(b) (2) (C) (ii) of title 42 of the United States Code, the appellant will use this citation throughout as well.

³ This provision is of state-wide applicability, promulgated pursuant to the provisions of 33 V. S. A. §§2504 (b) (3) and 2505 (c) (2).

⁴ Vermont has chosen to refer to this program as "Aid to Needy Families with Children" rather than "Aid to Families with Dependent Children" as it is referred to in the Social Security Act and elsewhere. The Vermont program shall be referred to hereinafter as "ANFC." When reference is to the Unemployed Father provisions, the program shall be referred to as "ANFC-UF".

Children' program for those weeks in which an otherwise eligible father receives unemployment compensation. Since injunctive relief was sought against the enforcement of the above-mentioned federal statute and state regulation on constitutional grounds, a three-judge United States District Court was convened pursuant to the provisions of 28 U.S.C. §§2281-2282. The decision of the three-judge Court, however, was based on a construction of the statute and regulation, and the constitutional issues were not reached.

The judgment sought to be reviewed was entered on February 21, 1974. (Appendix B). Appellant's notice of appeal was filed on April 9, 1974, in the United States District Court for the District of Vermont. A copy of the notice of appeal is attached hereto as Appendix C.

The statutory provisions believed to confer jurisdiction on the Supreme Court to hear this direct appeal are 28 U.S.C. §§1253 and 2101(b).

Cases believed to sustain the jurisdiction are *Hagans v. Lavine*, 94 S. Ct. 1372 (1974); *Engineers v. Chicago, R. I. & P. R. Co.*, 382 U. S. 423 (1966); and *Florida Lime & Avacado Growers, Inc. v. Jacobsen*, 362 U.S. 73 (1960).

STATUTE AND REGULATION INVOLVED

42 U.S.C. §607(b) (2) (C) (ii) reads as follows:

(b) The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title . . .

(2) provides . . .

(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section . . .

(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

The full text of 42 U.S.C. §607 is attached hereto as Appendix D.

Section 2333.1(3) of the Vermont Welfare Assistance Manual reads as follows:

An "unemployed father" is one whose minor children are in need because he is out of work, is working part-time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that . . .

(3) He is not receiving Unemployment Compensation during the same *week* as assistance is granted. [emphasis in original text]

The full text of §2333.1 is attached hereto as Appendix E.

QUESTION PRESENTED

1. Was the District Court correct in deciding that 42 U.S.C. §607(b)(2)(C)(ii) and §2333.1(3) of the Vermont Welfare Assistance Manual exclude families from ANFC-UF benefits for only those weeks in which an otherwise eligible father actually receives unemployment compensation, and thereby provide the father with the option of rejecting unemployment compensation for which he is qualified in favor of ANFC benefits, or must the father be ineligible for unemployment compensation before his family may be eligible for ANFC-UF?

STATEMENT OF THE CASE

1. Introduction

This case arises under Title IV-A of the Social Security Act of 1935, as amended, (42 U.S.C. §§601-610), which establishes the federal-state Aid to Families with Dependent Children (AFDC) program. The Social Security Act provides for substantial federal payments to states for the funding of state assistance programs on behalf of families with a dependent child or children. In order to be eligible for federal payments, however, there must be a "state plan" under

42 U.S.C. §602(a) which meets all of the relevant requirements of the statute and its implementing regulations.

For purposes of the AFDC program, a "dependent child" is defined in 42 U.S.C. §606(a) to mean, in part, a needy child who is deprived of parental support or care because of the death, continued absence from the home, or physical or mental incapacity of a parent.⁶

In addition, states are given the option⁷ under 42 U.S.C. §607 (a)⁷ to expand the definition of "dependent child" to include a needy child who has been deprived of parental support because of his father's unemployment. If a state plan provides for payments to families whose child is de-

⁶ 42 U.S.C. §606(a) reads as follows:

The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment; . . .

⁶ As of November, 1973, the Unemployed Father provisions were in effect in 24 states. See *Public Assistance Statistics November, 1973* DHEW Publication No. (SRS) 74-03100, NCSS Report A-2 (11/73), Table 8.

⁷ 42 U.S.C. §607(a) reads as follows:

The term "dependent child" shall, notwithstanding section 606 (a) of this title, include a needy child who meets the requirements of section 606 (a) (2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 606 (a) (1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

pendent because of the father's unemployment, the state must, among other things, meet the requirements of §607 (b) (2) (C) (ii).

That section requires that a state plan provide for the denial of assistance to such families with respect to any week for which the child's father receives unemployment compensation under a state or federal unemployment compensation law. This provision is implemented by a regulation promulgated by the United States Department of Health, Education and Welfare, set forth at 45 C.F.R. §233.100 (a) (5) (ii).⁸

The State of Vermont participates in the Unemployed Father segment of the AFDC program under an approved state plan. In order to comply with the above-mentioned requirements, the Vermont Department of Social Welfare has promulgated §2333.1 (3) of the Welfare Assistance Manual which parallels 42 U.S.C. §607 (b) (2) (C) (ii), and provides for the denial of ANFC-UF benefits for any week during which the unemployed father receives unemployment compensation.

2. Prior Proceedings

Appellees (plaintiffs below) are members (parents and minor children)* of three Vermont families. Two of the families were terminated from the receipt of ANFC-UF benefits once the father began to receive weekly unemployment compensation. The third family's application for

⁸ 45 C.F.R. §233.100 (a) (5) (ii) reads as follows:

(a) Requirements for State Plans. If a state wishes to provide AFDC for children of unemployed fathers, the state plan under Title IV — Part A of the Social Security Act must, except as specified in paragraph (b) of this section . . . (5) Provide for the denial of such aid to any such dependent child or the relative specified in section 406 (a) (1) of the Act [42 U.S.C. §606 (a) (1)] with whom such child is living, . . . (ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

ANFC-UF was denied because the father, at the time of application, was receiving unemployment compensation. In each case the amount of weekly unemployment compensation was less than the amount the family had been receiving or would have received under ANFC.

Suit was brought on March 6, 1972, in United States District Court for the District of Vermont seeking declaratory and injunctive relief and damages. The action against the appellant was brought pursuant to the provisions of 42 U.S.C. §1983. The suit challenged the constitutionality of 42 U.S.C. §607(b)(2)(C)(ii) and §2333.1(3) of the Vermont Welfare Assistance Manual alleging that the statute and regulation violated respectively the Due Process Clause of the Fifth Amendment and Due Process and Equal Protection Clauses of the Fourteenth Amendment. The appellees alleged that the court had jurisdiction over the appellant under 28 U.S.C. §§1343(3) and (4) and 28 U.S.C. §1331, and over the federal defendant under 28 U.S.C. §1361 and 28 U.S.C. §1336. A three-judge Court was convened under 28 U.S.C. §§2281-2282.

At the oral argument held on March 5, 1973, appellees raised for the first time a statutory claim. They suggested that the families could avoid disqualification under §607(b)(2)(C)(ii) and §2333.1(3) if the father refused to accept the unemployment compensation to which he was entitled. It was argued that the statutory and regulatory provisions exclude a family from eligibility only for those weeks in which the unemployed father actually receives unemployment compensation.

The three-judge Court determined that jurisdiction existed over both defendants under 28 U.S.C. §1343(3), but decided the case on the basis of the statutory claim, thereby avoiding a decision on the constitutional issues.

3. The District Court's Decision

In its opinion of October 17, 1973, the Court found that actual receipt of and not eligibility for unemployment compensation was controlling for ANFC-UF eligibility. From this determination, the Court concluded that an individual otherwise eligible for both programs could take his choice.⁹

The final order, issued February 21, 1974, enjoined appellant from denying ANFC-UF to any individual eligible for unemployment compensation in that it prohibited appellant from compelling any individual to avail himself of unemployment compensation benefits and required the appellant to advise applicants of this option. Even though the case was not certified as a class action, the order bound the appellant with respect to all others similarly situated.

Appellant's stay of execution of the judgment was granted on March 1, 1974, and his notice of appeal was filed on April 9, 1974.

THE QUESTIONS ARE SUBSTANTIAL

The District Court's interpretation that 42 U.S.C. §607 (b) (2) (C) (ii) and §2333.1(3) of the Vermont Welfare Assistance Manual provide an option whereby a father may reject unemployment compensation in order that his family may become eligible for AFDC benefits is erroneous.

It is the appellant's contention that the Court's construction of 42 U.S.C. §607 (b) (2) (C) (ii) and §2333.1(3) of the Vermont Welfare Assistance Manual is incorrect. The Court fixed its attention on the word "receives" in the statute and regulation, and interpreted that word narrowly to mean *actual* receipt. Such an interpretation, however, is utterly unwarranted in the welfare area, as is demonstrated below.

⁹ On January 8, 1974, the Court issued a supplemental opinion and order which, among other things, denied the appellant's motion for a new trial and appellees' motion for a rehearing with respect to the Court's denial of class action certification.

While as a general principle the ordinary meaning of statutory language should be given effect, a literal construction should not be followed when the result of such a construction can be shown to conflict with the intent of other relevant provisions of the same statutory scheme. *E.g.*, *Malat v. Riddell*, 383 U.S. 569, 571-72 (1966); *Richards v. United States*, 369 U.S. 1, 11 (1962). Such a conflict is present here.

In addition, when the intended scope of a statutory provision is called into question with respect to a particular set of facts, it is appropriate to consult the legislative history in order to determine Congressional intent. *E.g.*, *Allen v. State Board of Elections*, 393 U.S. 544, 570 (1969). Reviewing the legislative history is also necessary when a literal construction of a statute produces an extraordinary result. *E.g.*, *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 184 (1967). These principles are also applicable to the instant case.

1. The Court's interpretation creates an irreconcilable conflict between the provisions in question and other relevant provisions of the federal and state AFDC programs.

When 42 U.S.C. §607(b) (2) (C) (ii) and §2333.1(3) of the Vermont Welfare Assistance Manual are considered in relation to other relevant statutory and regulatory provisions, it becomes clear that the word "receives" as used in each is meant to encompass qualification for receipt,¹⁰ as well as actual receipt.

A provision of primary relevance is 42 U.S.C. §602(a) (7). When §607(b) (2) (C) (ii) is read in concert with §602(a) (7) and the latter's implementing regulations, there can be

¹⁰ Repeated use of the term "qualification for receipt" or similar terms is made throughout. It is intended that an unemployed father is qualified to receive unemployment compensation if he would have been eligible to receive it upon filing an appropriate application.

no doubt that an unemployed father who is merely qualified to receive unemployment compensation is precluded from ANFC-UF eligibility.

42 U.S.C. §602(a) (7) provides that,

A State plan for aid and services to needy families with children must . . . (7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same house as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income.

In 1968, the year Congress first required the States to deny AFDC assistance to families in which the father received unemployment compensation,¹¹ the mandate of section 602(a) (7) was being implemented in the rules contained in the United States Department of Health, Education and Welfare (HEW) *Handbook of Public Assistance Administration (Handbook)*.¹² And since HEW is the federal agency charged with the administration of the Social Security Act, deference must be given to its interpretations. *E.g.*, *Lewis v. Martin*, *supra*, at 559.

With respect to developing potential income and resources for recipients under Titles I, IV, X, XIV, and XVI of the Social Security Act, the *Handbook* provided as follows:

The State has the responsibility for establishing policies with reference to potential sources of in-

¹¹ See note 15, *infra*, at 13.

¹² These rules have been viewed as authoritative in several cases, including *Shea v. Vialpando*, 42 U.S.L.W. 4559 (U.S. Apr. 23, 1974), *Lewis v. Martin* 397 U.S. 552 (1970), and *King v. Smith*, 392 U.S. 309 (1968).

come that can be developed to a state of availability. *Handbook*, Part IV, §3120 (1966).

In explaining this policy, the *Handbook* dealt with the question of whether, under the above-mentioned Titles, the wife of a beneficiary under Old Age, Survivors and Disability Insurance (OASDI) benefits or a woman with a wage record must apply for reduced OASDI benefits if she was between age 62 and 65, or whether she could wait until age 65 and receive full benefits. The *Handbook* stated that the woman had an option, but went on to say:

The Federal Act, however, does not give any individual a right to have his needs met out of an assistance program because of his refusal to accept any resource that is available to him upon application. *Handbook*, Part IV, §3140(4) (1964).

The *Handbook* also outlined the appropriate treatment of "Other Statutory Benefits." It stated:

In addition to OASDI, other statutory benefits to which applicants and recipients for public assistance may qualify, include *unemployment insurance*, temporary disability insurance, railroad retirement benefits, civil service retirement benefits, other government retirement benefits (Federal, State, county and local), and veterans benefits. [emphasis added]

It is important that the State's policies and procedures for determining eligibility on the basis of need include clear instructions to staff for identifying cases in which such statutory benefits might be a resource, and, with respect to such cases, the process of determining the availability of such resources. *Handbook*, Part IV, §3140(6) (1964).

These *Handbook* provisions have now been superseded by HEW regulations which require that "... only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered ..." 45 C.F.R. §233.20(a) (3) (ii)

(c). Also, the state plan must "[p]rovide that the agency will establish and carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state of availability." 45 C.F.R. §233.20(a) (3) (ix).

Thus, the states have always had a clear obligation to take into consideration in determining eligibility all available sources of income, including unemployment compensation, under §602 (a) (7) and its implementing regulations.¹³ Therefore, it was unnecessary for Congress in 1968 to enact §607 (b) (2) (C) (ii) in terms of both "receives" and "qualified to receive." The word "receives" by itself was sufficient to carry forward the policy then in effect. To have included words such as "qualified to receive" would have been redundant.

In Vermont there has never been any confusion on this point. The Department of Social Welfare has always interpreted the federal statute and regulations to require the denial of ANFC eligibility when an unemployed father was qualified to receive unemployment compensation benefits. Although, like the federal statute, §2333.1(3) of the Welfare Assistance Manual is drafted solely in terms of receipt of unemployment compensation, other sections of the Manual parallel the federal provisions and make it clear that the word "receives" is intended to include the qualification for receipt. In any event, this is how the regulation has been applied.¹⁴

¹³ This point was recently reiterated by Mr. Justice Powell in *Shea v. Vialpando*, *supra*, at 4562. He stated: "Congress has been careful to ensure that *all* of the income and resources properly attributable to a particular applicant be taken into account . . ." [emphasis in original text]

¹⁴ It should be pointed out that the receipt or availability of other types of income or resources would not necessarily work a complete disqualification for ANFC benefits as would the receipt or availability of un-

Thus, pursuant to §2270 of the current Manual,¹⁵

All potential sources of income and/or resources to meet current or future needs of applicant(s)/recipient(s) shall be explored, identified, and if feasible, developed. The applicant/recipient shall be encouraged to take the initiative, when able, to secure such income and/or resources for himself, with the assistance, if needed, of department staff.

Practical and feasible steps in identifying and developing potential income and/or resources include, but are not limited to the following . . .

2. Filing applications for benefits to which the individual may be entitled.

2. The Court's interpretation is contradictory to relevant legislative history.

The legislative history of §607(b)(2)(C)(ii), while limited, indicates that Congress intended to exclude from AFDC eligibility those families in which the unemployed father either receives or is qualified to receive unemployment compensation.

Prior to January, 1968, when Congress first required that states deny AFDC assistance to families when the father receives unemployment compensation, states had been given the option of denying all or any part of such assistance when unemployment compensation was received.¹⁶ In the House

employment compensation. This fact merely demonstrates, however, that Congress intended to continue to treat as mutually exclusive the unemployment compensation program and the AFDC program. This point is discussed, *infra*, at 16.

¹⁵ Section 2270 states the general policy that has been in effect since Vermont began participating in the ANFC-UF program in July, 1968.

¹⁶ As originally enacted in 1961, Congress temporarily expanded the definition of "dependent child" to include a child whose dependency was caused by the unemployment of a parent. The expanded definition was optional with the states, as it is today. Those states that chose to provide assistance under the expanded definition were given the option of providing for the denial of all or any part of the AFDC assistance

version of the January, 1968 amendment to the Social Security Act, (the version which was ultimately enacted), states were required to deny assistance if and for so long as the unemployed father received unemployment compensation. The amendment passed by the Senate, however, retained the option provision then in effect. The Conference Committee's report explained the import of both versions as follows:

"Unemployed Fathers under AFDC"

Amendments Nos. 186, 189, 190, 191, 193 and 195; Section 407 of the Social Security Act, as amended by Section 203 (a) of the House bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to *exclude* fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid, *and fathers who receive (or are qualified to receive) any unemployment compensation under state law.* [emphasis added]

The Senate amendments removed these exclusions, and restored the provisions of the present law under which a state may at its option wholly or partly

for any month if the unemployed parent received unemployment compensation for any week during that month. Act of May 8, 1961, Pub. L. 87-31, §1, 75 Stat. 75.

These provisions were extended for five years in 1962. Act of July 25, 1962, Pub. L. 87-543, Title I, §131 (a), 76 Stat. 193.

In 1967, Congress extended the termination date from June 30, 1967 to June 30, 1968. Act of June 29, 1967, Pub. L. 90-36, §2, 81 Stat. 94.

In 1968, the provisions were amended twice. The first change provided for the application of the provisions to unemployed fathers rather than unemployed parents if and as long as the child's father received unemployment compensation. Act of January 2, 1968, Pub. L. 90-248, Title II, §203 (a), 81 Stat. 882. The second change added the present language which prohibits the payment of AFDC benefits on the basis of the father's unemployment with respect to any week for which the father receives unemployment compensation. Act of June 28, 1968, Pub. L. 90-364, Title III, §302, 82 Stat. 273.

deny AFDC for any month where the father receives unemployment compensation during the month. (The Senate amendments also removed certain work or training requirements in order to conform with amendment No. 198, and modified the effective date provisions of the House bill). The Senate recedes (except on the conforming amendments and effective date provisions). H. R. Rep. No. 1030, 90th Cong., 1st Sess. 57 (1967) [emphasis added].

Thus, it is apparent that the Conference Committee understood the House version to "exclude" from AFDC eligibility those fathers who "receive" unemployment compensation as well as those who are "qualified to receive" unemployment compensation. In addition, the fact that the words "or are qualified to receive" are enclosed within parentheses suggests that the Conference Committee realized that the word "receives" as used in the amendment included both the actual receipt and the qualification for such receipt.

This interpretation is entirely consistent with what Congress was attempting to accomplish. The report of the House Committee on Ways and Means leaves no doubt that its primary purpose in amending the Unemployed Father provisions of the AFDC program was to reduce the welfare rolls.¹⁷ One of the ways to effectuate this objective was to preclude AFDC eligibility to families in which the father was receiving (or qualified to receive) unemployment compensation.

With this clear purpose in mind, it would make little sense to deny eligibility to families of actual recipients while granting eligibility to families in which the father was qualified to receive unemployment compensation but chose not to apply.

¹⁷ H. R. Rep. No. 544, 90th Cong., 1st Sess. 2 (1967)

3. The Court's interpretation undermines the traditional separateness of the unemployment compensation program and AFDC.

The interpretation of §607(b)(2)(C)(ii) which the District Court advances is inconsistent with the traditional relationship between the unemployment compensation program and AFDC. Historically, the two concepts have been considered mutually exclusive.

The purposes of unemployment compensation are outlined by Chief Justice Burger in *California Department of Human Resources Development v. Java*, 402 U.S. 121 (1971), wherein he quotes relevant excerpts from the legislative history of the unemployment compensation provisions of the Social Security Act as originally enacted in 1935. He states:

The Social Security Act received its impetus from the Report of the Committee on Economic Security, [footnote omitted] which was established by executive order of President Franklin D. Roosevelt to study the whole problem of financial insecurity due to unemployment, old age, disability, and health. In its report, transmitted to Congress by the President on January 17, 1935, the Committee recommended a program of unemployment insurance compensation as a "first line of defense for . . . [a worker] ordinarily steadily employed . . . for a limited period during which there is expectation that he will soon be reemployed. This should be a contractual right not dependent on any means test . . . It will carry workers over most, if not all, periods of unemployment in normal times *without resort to any other form of assistance.*" [footnote omitted] 402 U.S. at 130-31 [emphasis added].

And continuing at 131-32:

The purpose of the Act was to give prompt if only partial replacement of wages to the unemployed, to enable workers "to tide themselves over, until they get back to their old work or find other employ-

ment, *without having to resort to relief.*" [footnote omitted] Unemployment benefits provide cash to a newly unemployed worker "at a time when otherwise he would have nothing to spend," [footnote omitted] serving to maintain the recipient at subsistence levels *without the necessity of his turning to welfare or private charity.* [emphasis added].

Clearly then, unemployment compensation was originally, and still is, intended to be an alternative to public assistance.

This fact is also supported in the legislative history of the AFDC program. The Aid to Dependent Children program, as it was originally called, was also created in the Social Security Act of 1935. The report of the Senate Committee on Finance, in discussing the aid to children provisions of H.R. 7260, the bill that was enacted, stated as follows:

The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures for the security of children. Unemployment compensation, for instance, will benefit many children in the homes of unemployed workers; and even old-age pensions and old age benefits will in many cases indirectly aid children in families whose resources have been drained for the support of aged grandparents.

In addition, however, there is great need for special safeguards for many underprivileged children . . . S. Rep. No. 628, 74th Cong., 1st Sess. (1935)

From this language it is apparent that the Aid to Dependent Children program was not intended to assist the same category of children that would be benefited by unemployment compensation. The Aid to Dependent Children program was meant to cover children who were not members of families in which the father was eligible for unemployment compensation.

This distinction was somewhat obscured in 1961 when

Congress first expanded the definition of "dependent child" to include children of unemployed parents and gave states the option of treating unemployment compensation as they saw fit.¹⁸ In 1968, however, the traditional separateness of the two programs was clearly reestablished. Thereafter, under 42 U.S.C. §607(b)(2)(C)(ii) the receipt (or qualification for receipt) of unemployment compensation acted as a complete bar to AFDC eligibility, rather than merely a factor to be considered. Only after the father became ineligible for unemployment compensation for which he was qualified, could his family become eligible for AFDC.

In *Burr v. Smith*, 322 F. Supp. 980 (W. D. Wash 1971), *aff'd mem.* 404 U.S. 1027 (1972), apparently the only other case in which 42 U.S.C. §607(b)(2)(C)(ii) has been involved, the Court addressed itself to the reasonableness of this separate treatment by stating:

Many legitimate state interests arguably are served by relying exclusively upon unemployment compensation in the first instance. For example, primary reliance on unemployment reserves frees limited state funds for other uses, including the procurement of matching federal funds for public assistance program; the receipt of insurance benefits to which they have contributed may be better

¹⁸ While the language of the pre-1968 statute does provide an option, the legislative history suggests that Congress did not in fact have this in mind. The provision which was ultimately enacted was added by the Senate Finance Committee after the legislation had been passed by the House. No public hearings were held, and the Committee report (S. Rep. No. 165, 87th Cong., 1st Sess. (1961)) sheds no light on the subject. During the floor debate, however, Senator McCarthy, a member of the Finance Committee, in response to a telegram critical of the Committee amendments, said the following:

Mr. President, this is a temporary program to meet an emergency situation. Its purpose is to assist those families where the wage earner has exhausted his unemployment compensation or never had coverage. 107 Cong. Rec. 6400-01 (1961).

for the morale of unemployed workers than would be dependence upon or even eligibility to receive welfare assistance; the receipt of unemployment compensation, which is temporary in nature, may act as a greater incentive for the unemployed to seek new employment than the receipt of welfare assistance.

It is not our purpose here to list all the considerations which might justify the legislature's reliance on unemployment compensation. Our only purpose is to indicate that there are reasonable arguments which might form the legitimate legislative base for treating recipients of unemployment compensation differently from recipients of other income sources. [citation omitted] 322 F. Supp., at 985.

Although the Court in *Burr* was speaking only to the reasonableness of Washington's regulation, the rationale is equally applicable with respect to §607(b)(2)(C)(ii) as applied in the present case. The result of the District Court's ruling, however, would be to obliterate the clearly intended and rational distinction between the two programs.

4. The Court's interpretation is in complete conflict with the decision in *BURR v. SMITH*, 322 F. Supp. 980 (W. D. Wash 1971), *aff'd mem.* 404 U.S. 1027 (1972).

In *Burr v. Smith*, plaintiffs challenged on constitutional grounds a Washington statute and welfare regulation. The regulation was remarkably similar to the Vermont regulation in question here; it denied AFDC assistance to families in which the father received or was eligible to receive unemployment compensation. The regulation was based on 42 U.S.C. §607(b)(2)(C)(ii), as is Vermont's.

While the federal statute was not directly in issue, the three-judge District Court found no conflict between the statute and the state regulation, stating that the challenged regulation "was promulgated in direct response to the federal

provision." 322 F. Supp., at 983. Moreover, the Court determined that the regulation did not violate the Equal Protection Clause of the Fourteenth Amendment. The decision was affirmed by this Court without opinion.

The obvious result of this Court's affirmance has been to permit Washington to continue to carry out the mandate of 42 U.S.C. §607(b)(2)(C)(ii) by excluding from AFDC benefits those families in which father qualifies for unemployment compensation.

By contrast, the District Court's decision in the instant case has precluded Vermont from denying such families ANFC benefits. The decision was based on a construction of the same federal statute, and a Vermont regulation identical in effect to Washington's. Thus, the Court's decision in this case clearly conflicts with the decision in *Burr v. Smith*.

5. The Court's interpretation produces extraordinary results in that it would (a) shift the clear burden of supporting unemployed fathers and their families from employer contributions to welfare appropriations, (b) unjustly enrich former employers of unemployed fathers, and (c) encourage "program shopping."

If the Court's interpretation of the statute and regulation is followed, an obvious result would be to drastically shift the burden of supporting families of unemployed fathers from the unemployment compensation program to the AFDC program in those cases where the father is eligible for either and the welfare benefits prove to be higher.¹⁹ The total onus would be forced upon the already strained welfare budgets, while accumulated unemployment compensation funds would remain intact. Surely, it would appear more logical from a social policy perspective to allocate these limited welfare appropriations to those families which have no

¹⁹ In addition to weighing the monetary consideration, the individual would have to consider Medicaid and Food Stamp benefits which would be automatically available to members of his family as ANFC recipients.

alternative source of income. This is especially true where there is no suggestion whatsoever that Congress intended to alter the relative responsibilities of the programs.

As a related consequence, those former employers of unemployed fathers who are required by law to contribute to the unemployment compensation trust fund would be unjustly enriched. Since such fathers would be permitted to forego completely the unemployment compensation to which they are entitled, these employers would benefit over time through reduced rates of contribution.²⁰ It is highly doubtful that Congress intended such a potential windfall to employers at the expense of the taxpayer.²¹

In addition, the District Court's decision would encourage "program shopping." An unemployed father would be in a position to evaluate the relative benefits under each program, and apply for the most advantageous. The success of this approach, however, would depend on knowledgeable, well-informed applicants. Yet it is unlikely that the newly unemployed father would have sufficient information on which to make a reasonable choice. Under the Court's order, only those fathers who actually apply for ANFC benefits would be advised of their option; those who apply for

²⁰ In Vermont, those employers who are required to contribute do so according to a rate schedule which is determined by the amount paid in to the trust fund versus the amount paid out in benefits. Basically the less paid out, the lower the rate. (Vermont's unemployment compensation program is established under the provisions of 21 V.S.A. §1301, et seq. Rates of employer contributions are established under §§1324-27.)

²¹ In an affidavit filed in the District Court, appellant Philbrook estimated, on the basis of statistics contained in an affidavit submitted by an employee of the Vermont Department of Employment Security, that the cost to Vermont in additional ANFC benefits could be as high as \$1 million in fiscal year '75. Additionally, the federal share in Vermont could increase by approximately \$2 million.

unemployment compensation would not. It is extremely unlikely that Congress intended to create such an irrational system.

CONCLUSION

It is the appellant's belief that the District Court has distorted the meaning of 42 U.S.C. §607(b)(2)(C)(ii) and §2333.1(3) of the Vermont Welfare Assistance Manual. While this interpretation allowed the Court to avoid a ruling on the constitutional issues, such avoidance should not be practiced for its own sake.²² If Congress intended, as it clearly did, that the families of unemployed fathers should be barred from the receipt of AFDC benefits during the period that the father is eligible for unemployment compensation, then the statute and regulation should be given full force and effect, and the constitutional issues squarely faced.

The appellant is aware of course that the proper construction of the statute and regulation might create some inequities. Nevertheless, these inequities should not be overcome by subverting the will of Congress. If these inequities are constitutionally impermissible, then they should be overcome by a ruling to that effect. The Court's decision merely replaces an arguably questionable system with one clearly irrational.

Therefore, for the reasons expressed herein, the appellant contends that the questions presented by this appeal are sub-

²² As Mr. Justice Brennan said recently in his dissenting opinion in *DeFunis v. Odegaard*, 42 U.S.L.W. 4578, 4589 (U.S. Apr. 23, 1974), "Although the court should, of course, avoid unnecessary decisions of constitutional questions, we should not transform principles of avoidance of constitutional decisions into devices for sidestepping resolution of difficult cases."

stantial and of great public importance. It is urged that probable jurisdiction be noted.

Respectfully submitted,

KIMBERLY B. CHENEY,

Attorney General

DAVID L. KALIB,

Assistant Attorney General

DEAN B. PINELES,

Assistant Attorney General

APPENDIX A

JEAN GLODGETT ET AL., INTERVENORS,

v.

JOSEPH BETT, INDIVIDUALLY AND AS COMMISSIONER
OF THE VERMONT DEPARTMENT OF SOCIAL WELFARE;
ELLIOTT RICHARDSON, INDIVIDUALLY AND AS SECRETARY
OF THE DEPARTMENT OF HEALTH, EDUCATION
AND WELFARE.

Civ. A. File No. 6550.

United States District Court,

D. Vermont

Oct. 23, 1973.

Supplemental Opinion Dec. 28, 1973.

OPINION

HOLDEN, District Judge.

The Vermont Department of Social Welfare denies payment under its "Aid to Needy Families with Children" (ANFC) program to families in which the father receives unemployment compensation.¹ During any week in which the father receives unemployment benefits, his family is held ineligible for any ANFC payments, even if the unemployment payment is less than the ANFC payment which the family otherwise would have received. Vermont must op-

¹ Vermont Welfare Regulation 2333.1 provides in part:

"An 'unemployed father' is one whose minor children are in need because he is out of work, is working part time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that:

* * * * *

3. He is not receiving Unemployment Compensation during the same week as assistance is granted."

erate its ANFC program in this manner in order for the ANFC-UF ("Aid to Needy Families with Children — Unemployed Father") segment of the program to receive federal financial assistance under the federal "Aid to Families with Dependent Children" (AFDC) program.²

The named plaintiffs, Glodgett, Percy and Derosia, are the parents and minor children of Vermont families who were denied ANFC assistance because of the receipt of unemployment compensation by the father in each of these families. On December 17, 1971, the Glodgett family's application for ANFC was accepted and they were allotted a monthly benefit of \$239.00. On January 12, two days after Mr. Glodgett began receiving unemployment compensation from New Hampshire of \$14.00 per week, he was notified by the state that his ANFC payments would be terminated as of February 16, 1972, by reason of his receiving unemployment compensation. The ANFC grant was reinstated soon after Mr. Glodgett ceased receiving unemployment benefits in March.

When Roger Percy's employment as a trucker was suspended, he began receiving unemployment benefits of \$172.00 per month. Because of his receipt of unemployment compensation, his family was denied ANFC payments which would have totalled \$410.00 per month, had the family not been disqualified.

² Although each state may refuse to participate in the federal welfare program, once a state decides to participate it must maintain a system consistent with the Social Security Act. See *Townsend v. Swank*, 404 U.S. 282, 285, 92 S.Ct. 502, 30 L.Ed.2d 448 (1971); *Rosado v. Wyman*, 397 U.S. 397, 419-420, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970); *King v. Smith*, 392 U.S. 309, 316-317, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968). If a state elects to provide ANFC benefits to families with unemployed fathers (ANFC-UF), 42 U.S.C. §607 (b) (2) (C) (ii) requires that the state plan must deny benefits under §607 during any week in which the father receives unemployment compensation. See text, *infra*.

On October 25, 1972, the Derosia family qualified for ANFC assistance in the amount of \$394.00 per month. On November 6 Mrs. Derosia notified Social Welfare that the family was receiving unemployment compensation of \$56.00 per month. For this reason the Derosias' ANFC grant was terminated as of December 1, 1972.

The plaintiffs seek injunctive and compensatory remedies on their own behalf and also on behalf of the class they claim to represent. More particularly, they seek the following relief: permission to maintain this action as a class action; a declaration that 42 U.S.C. §607(b)(2)(C)(ii) and Vermont Welfare Regulation 2333.1 are unconstitutional because they respectively violate the Due Process Clause of the Fifth Amendment and the Equal Protection Clause of the Fourteenth Amendment. They seek an order enjoining the enforcement of the statute and regulation against the plaintiff class and compensatory ANFC benefits paid retroactively to the plaintiffs and class in the same amount that they would have been paid under 42 U.S.C. §606,³ or as if the mother, instead of the father, had been receiving unemployment compensation.⁴ They further request an order directing the Secretary of HEW to approve the Vermont ANFC-UF program without requiring the inclusion of a provision disqualifying families with fathers receiving unemployment compensation; and such further relief as the court deems appropriate. At oral argument the plaintiffs advanced an additional statutory claim, contending that Vermont Wel-

³ Section 606, through the definition of "dependent child", authorizes payments to families in which a child has been deprived of parental support by reason of the death, absence or incapacity of a parent. See text, *infra*.

⁴ Section 607(b)(2)(C)(ii) provides for the disqualification from ANFC-UF benefits of families in which the father receives unemployment payments, but does not disqualify families in which the mother receives unemployment benefits. See text, *infra*.

fare Regulation 2333.1 is enforced inconsistently with 42 U.S.C. §607 (b) (2) (C) (ii).

A three-judge court was convened, as required by 28 U.S.C. §§2281, 2282, since injunctive relief is sought against state and federal enactments on constitutional grounds. The defendant Betit at the time the action was commenced was Commissioner of Social Welfare for the State of Vermont. The defendant Richardson was then Secretary of the Department of Health, Education and Welfare. All parties have moved for summary judgment. Both defendants have moved to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted.

Class Action Status

The named plaintiffs contend they are representative of a class of Vermont families deprived of ANFC because the father receives unemployment compensation. In their complaint they request certification of this suit as a class action.

While the defendants do not contest the class action status of this suit, before the action may so proceed the court is called upon to determine whether the action is maintainable as a class suit. Fed.R.Civ.P. Rule 23 (c) (1);⁵ *Jackson v. Cutter Laboratories*, 338 F.Supp. 882, 886 (E.D.Tenn. 1970). An action is not maintainable as a class action merely because it is so designated in the pleadings. *Cash v. Swifton Land Corporation*, 434 F.2d 569, 571 (6th Cir. 1970); *In re Swan-Finch Oil Corporation*, 279 F.Supp. 386, 391 (S.D.N.Y. 1967). To the contrary, the plaintiffs in a purported class action bear the burden of establishing that their action meets the prerequisites of Rule 23. *Rossin v. Southern*

⁵ Rule 23 (c) (1) provides:

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.

Union Gas Company, 472 F.2d 707, 712 (10th Cir. 1973); *Poindexter v. Teubert*, 462 F.2d 1096, 1097 (4th Cir. 1972); *Daye v. Commonwealth of Pennsylvania*, 344 F. Supp. 1337, 1342 (E.D.Pa. 1972); *Clark v. Thompson*, 206 F.Supp. 539, 542 (S.D. Miss.1962), *aff'd* 313 F.2d 637 (5th Cir. 1963), cert. denied, 375 U.S. 951, 84 S. Ct. 440, 11 L.Ed.2d 312 (1963); *Free World Foreign Cars, Inc. v. Alfa Romeo*, 55 F.R.D. 26, 29 (S.D.N.Y.1972); see *Demarco v. Edens*, 390 F.2d 836, 845 (2d Cir. 1968); *Phillips v. Sherman*, 197 F.Supp. 866, 869 (N.D.N.Y.1961). This burden imposes upon the plaintiffs in a purported class action the responsibility to move for formal certification of their class action by the court under Rule 23(c)(1). *Herbst v. Able*, 45 F.R.D. 451, 453 (S.D.N.Y.1968); *Zeigler v. Gibraltar Life Insurance Company*, 43 F.R.D. 169, 170 (D.S.D.1967).

In this case, beyond their request for certification in their complaint, the plaintiffs have not sought a formal determination of class action status. Thus the vital issues concerning the adequacy of representation which underly [*sic*] any representative action remain unattended and unresolved. The question of adequacy of representation, see *Hansberry v. Lee*, 311 U.S. 32, 41-43, 61 S.Ct. 115, 85 L.Ed. 22 (1940); *Herbst v. Able*, *supra* at 453 of 45 F.R.D., has not been answered. Nor have important issues concerning notice: whether notice is required not only if the damages aspect of the action is to be maintained, see *Eisen v. Carlisle & Jacquelin*, 479 F.2d 1005, 1015 (2d Cir. 1973), but also if injunctive relief is sought on behalf of the class under Rule 23(b)(2), compare *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 564-565 (2d Cir. 1968); *Schrader v. Selective Service System Local Board No. 76 of Wisconsin*, 470 F.2d 73, 75 (7th Cir. 1972); *Zachery v. Chase Manhattan Bank*, 52 F.R.D. 532, 535 (S.D.N.Y. 1971), with *Yaffee v. Powers*, 454 F.2d 1362, 1366 (1st Cir. 1971); *Johnson v. Georgia Highway*

Express, Inc., 417 F.2d 1122, 1125 (5th Cir. 1969); *Woodward v. Rogers*, 344 F. Supp. 974, 980 n. 10 (D.D.C. 1972); *Vaughns v. Board of Education of Prince George's County*, 355 F.Supp. 1034, 1035 (D.Md. 1972); *Northern Natural Gas Co. v. Grounds*, 292 F.Supp. 619, 636 (D.Kan. 1968); 3B Moore, Federal Practice, ¶23.72, pp. 1421-1422 (1969). And if prejudgment notice is required here, the mechanics involved, such as the form the notice should take, have not been dealt with by the parties. Compare *Eisen v. Carlisle & Jacquelin*, 479 F.2d 1005, 1015 (2d Cir. 1973), with e.g., *Lopez v. Wyman*, 329 F.Supp. 483, 486 (W.D.N.Y. 1971); *Snyder v. Board of Trustees of the University of Illinois*, 286 F.Supp. 927 (N.D. Ill. 1968).

Despite the fact that these issues have not been attended to, the plaintiffs have pressed their motion for summary judgment. Without a determination of these issues, a representative action which seeks to affect the rights of absent parties may not proceed. See *Hansberry v. Lee*, *supra*; *Mullane v. Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 34 L.Ed. 865 (1950). In moving for summary judgment without having sought a formal certification of this action as a class action, the plaintiffs leave us no choice but to dismiss the class aspects of this suit, on the ground that the plaintiffs have failed to meet their burden to prove that the action meets the prerequisites of Rule 23.

Jurisdiction

Section 1343(3) of Title 28, United States Code, affords jurisdiction over plaintiffs' claims against both the state and the federal defendants *Aguayo v. Richardson*, 473 F.2d 1090, 1102 (2d Cir. 1973); cf. *Macias v. Finch*, 324 F.Supp. 1252 (N.D. Calif. 1970), (3-Judge Court), *aff'd sub nom*, *Macias v. Richardson*, 400 U.S. 913, 91 S.Ct. 180, 27 L.Ed.2d 153 (1970); *Conner v. Finch*, 314 F.Supp. 364 (N.D. Ill.

1970), (3-Judge Court), *aff'd sub nom, Conner v. Richardson*, 400 U.S. 1003, 91 S.Ct. 575, 27 L.Ed.2d 618 (1971); but see *Stinson v. Finch*, 317 F.Supp. 581 (D. Ga. 1970), (3-Judge Court). Section 1343(3) provides original jurisdiction in the United States District Court of actions seeking redress for deprivations of constitutional rights occurring under color of state law or regulation.⁶

The plaintiffs have been denied ANFC-UF benefits, arguably in violation of their constitutional rights, under color of Vermont Welfare Regulation 2333.1. There is plainly subject matter jurisdiction over this suit under 28 U.S.C. §1343(3), albeit that there is no specific assertion of jurisdiction on this statute.

As defendant Betit is responsible for enforcing the state regulation in question, he is responsible in part for the denial of benefits to the plaintiffs, so there is jurisdiction over the claim against him. There is also jurisdiction over the claim against the Secretary of HEW, since his enforcement of 42 U.S.C. §607(b)(2)(C)(ii) requires the defendant Betit to deny ANFC benefits to the plaintiffs. Thus he is partially responsible for the deprivation of which all the plaintiffs complain.⁷

⁶ 28 U.S.C. §1343(3) provides:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

⁷ All that section 1343(3) requires for the exercise of jurisdiction is an alleged deprivation of Constitutional rights effected under color of state law or regulation. Given such a state action, which concededly occurred here, it is necessary to join as party defendants all persons responsible for that action. While the *Stinson* court felt that a Secretary of HEW could not properly be joined, because of his administration of

The failure of the plaintiffs to plead section 1343(3) as a basis for the court's authority over the claim against the Secretary is not a serious jurisdictional defect. While it is the duty of the court to take note of any defects of jurisdiction so that the mandate of the statutes which limit jurisdiction will be observed, *Arnold v. Troccoli*, 344 F.2d 842 (2d Cir. 1965), a statute conferring federal jurisdiction need not be specifically pleaded if facts giving the court jurisdiction are set forth in the complaint. *New York State Waterways Association, Inc. v. Diamond*, 469 F.2d 419, 421 (2d Cir. 1971); *Eidschun v. Pierce*, 335 F.Supp. 603, 615 (D.Iowa

a federal matching grant statute, as a party defendant to a civil rights action challenging the state statutory program receiving the matching funds, we do not agree.

First, the *Stinson* court took the view that 28 U.S.C. §1391(e) barred the exercise of personal jurisdiction over the Secretary by the court in the district where the claim arose, if a non-federal party were joined as a party defendant. The law in this circuit is to the contrary. *Liberation News Service v. Eastland*, 426 F.2d 1379, 1382 n. 5 (2d Cir. 1970).

Second, it is highly unrealistic to suppose that the threat by a federal official of a denial to a state or federal ANFC-UF matching funds, in retaliation for a refusal by the state to operate its ANFC-UF program in a certain way, does not make that official partially responsible for the manner in which the program is operated. The *Stinson* court's denial of this responsibility would sanction a federal statute which, arguably, authorizes the states to violate the Equal Protection Clause, contrary to the express prohibition against such Congressional action in *Shapiro v. Thompson*, 394 U.S. 618, 641, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

To the extent there is any doubt about the propriety of extending 1343(3) jurisdiction over the claim against the federal defendant here, the doubt should be resolved in favor of jurisdiction, to avoid the anomaly of denial of federal jurisdiction over a suit against a federal officer challenging the constitutionality of a federal statute involving social welfare, an area in which the federal courts have particular expertise. See Friendly, *Federal Jurisdiction: a General View* 69-70, 121-122; Wright, *Law of Federal Courts* 110; *Aguayo v. Richardson*, 473 F.2d 1090, 1102 (2d Cir. 1973).

1971); see also *Phillips v. Rockefeller*, 321 F.Supp. 516 (S.D.N.Y.1970), aff'd, 435 F.2d 976 (2d Cir. 1970). The motions of the defendants to dismiss for want of jurisdiction of the subject matter of this controversy must be denied.

The Statutory Scheme

Title IV (42 U.S.C. §601 *et seq.*) of the Social Security Act provides for a cooperative federal-state program to assist needy families with children. States are not required to establish such programs. If they do, they must submit their plan to the Secretary for approval. Every state has established such a program.⁸ If the plan submitted meets the requirements of 42 U.S.C. §602(a) and contains none of the conditions prohibited in §602(b), then the Secretary "must approve" it. Upon approval, the state becomes entitled to receive substantial federal funding for payments made in accordance with the plan and applicable federal conditions. Vermont's plan has been approved by the Secretary.

As originally established by the Social Security Act of 1935, the program for aid to dependent children did not provide for the needs of children caused by the unemployment of a parent. *King v. Smith*, 392 U.S. 309, 327-330, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968). In 1961 the Act was amended to allow states the option of extending coverage to children who were needy because of the unemployment of a breadwinning parent. The 1961 amendment provided that a state could, if it chose to do so, deny all or any part of an AFDC stipend to a family during any month in which

⁸ *Dandridge v. Williams*, 397 U.S. 471, 472-473, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970). For a general picture of AFDC as established by the Social Security Act, see *King v. Smith*, 392 U.S. 309 (1968); *Rosado v. Wyman*, 397 U.S. 397, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970); *Dandridge v. Williams*, *supra*.

the supporting parent received unemployment compensation.

In 1968 the section of the act relating to ANFC-UF was amended to include the provisions challenged here. Benefits became available to a family whose need was occasioned by the unemployment of a father, under standards prescribed by the Secretary; formerly, benefits accrued to a family whose need was caused by the unemployment of a parent, as defined by the state. The 1968 amendment also mandated denial of benefits to a family during any week in which the father received unemployment compensation. Formerly the Act allowed the state the option of enforcing a complete or partial denial of benefits, or a full stipend without reduction, for any month during which the parent received unemployment compensation.

Section 606(a), by definition of "dependent child," provides for assistance to families who are needy because of deprivation of parental support or care by reason of the death, continued absence or physical or mental incapacity of a parent. Section 607 enlarges this coverage to authorize benefits to children who are needy as a result of the unemployment of the father.

Section 607(b) makes this extended coverage applicable "to a State if the State's plan, approved under Section 602 of this title —

(2) provides —

(C) for the denial of aid to families with dependent children to any child or relation specified in subsection (a) of this section — (i) if, and for so long as, such child's father is not currently registered with the public employment office in the State, and

(ii) with respect to any week for which the child's father receives unemployment compensation under

an unemployment compensation law of a State or of the United States."

Vermont has elected to extend its ANFC program to include those who have been deprived of parental support or care by reason of the unemployment of the father under 42 U.S.C. §607. In response to the requirements of that section, it has promulgated Welfare Regulation 2333.1. This regulation renders the family of an unemployed father eligible for ANFC-UF benefits if the father "is not receiving Unemployment Compensation during the same *week* as assistance is granted." (Emphasis in original text.)

This is in contrast to the treatment afforded ANFC families who receive income in a form other than unemployment compensation received by the father. The receipt of such income does not render the family ineligible for ANFC; the amount of the receipt is simply deducted from the ANFC payment which the family would normally receive.⁹

⁹ Under the Vermont plan, approved by the Secretary of HEW as consistent with the requirements of the Social Security Act, receipt of income does not render a family per se ineligible for ANFC. If the amounts received are insufficient to bring the family's income above the state-determined standard of need, those amounts are simply subtracted from the amount of the grant to which the family is entitled. Under Vermont Welfare Regulation 2601, the "Vermont ANFC payment level" is defined as the sum of the ANFC basic needs standard and shelter expense, minus "the budgeted income of the applicant and his legal dependents." "Budgeted income" is defined as "gross monthly income received from any source by the applicant and his legal dependents without income exclusions for any purpose." *Id.* "Unearned income" is explicitly defined to include "income from pension and benefit programs, such as Social Security, Railroad Retirement, veteran's pension (or compensation, Unemployment Compensation, employer or individual private pension plans and/or annuities, etc." Vermont Welfare Regulation 2253.

For example, suppose a family is in need because of the father's illness and the father receives a veteran's pension. The family is not disqualified from receiving ANFC. If it is eligible for ANFC, it

The Statutory Claim

The plaintiffs rely on the language of §607 to assert the claim that an unemployed father can avoid disqualification from ANFC-UF benefits by refusing to accept unemployment compensation. In this they rightfully maintain that a family eligible for ANFC benefits under section 607 can be excluded only for each week in which unemployment compensation is actually received by the father. It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation. And in this construction the defendants concur. We find nothing in the legislative history of the enactment at variance with this construction.

Since actual payment of unemployment compensation is the controlling factor, rather than eligibility for such payment, the statute affords the unemployed father an option. There is no compulsion that he accept unemployment compensation. He may accept such payment and forego ANFC-UF benefits for himself and his family, or he may accept the benefits afforded by the ANFC-UF program at the cost of surrendering unemployment compensation. The option is to receive (a) ANFC without unemployment compensation, or (b) unemployment compensation without ANFC. We construe this option to operate as follows: If a father otherwise eligible for ANFC-UF receives unemployment

receives an ANFC payment equal to the state standard of need reduced by the amount of the veteran's benefit.

We use the term "state standard of need" to mean ~~the~~ the amount of money that a family qualifying for ANFC is entitled to receive. The standard varies according to the number of persons in the group eligible for assistance, the number of persons in the household where the group resides, the place of residence of the group, and the form of housing involved, and includes funds to allow the recipient group to purchase the necessities of life: food, clothing, fuel, utilities, housing, etc. Vermont Welfare Regulation 2211.1-2211.2.

benefits which are less than the ANFC payment for which he qualifies, he can reject the unemployment check in favor of the ANFC payment, thereby receiving an income consistent with the state standard of need. If, on the other hand, he receives an unemployment check which is larger than his ANFC stipend would be, he can accept it, and thereby forego his right to ANFC for that week. In either event, the option available to him will provide total income equal to or greater than the state standard of need.

[6] This result provides the same relief the plaintiffs seek to achieve by way of their constitutional claims. In those claims the plaintiffs seek a judicial determination that families of unemployed fathers applying for AFDC should receive the same treatment as families in need for other reasons, who qualify for AFDC under §606. Their concern is that families of unemployed fathers, like other families applying for AFDC, should be assured of receiving an income equal to the state standard of need, irrespective of their eligibility to receive outside income. The option afforded by our construction of 42 U.S.C. §607(b)(2)(C)(ii) provides this protection. Since our construction of this statute resolves this case, we are precluded from reaching the plaintiffs' constitutional claims. *Asblander v. Tennessee Valley Authority*, 297 U.S. 288, 347, 56 S.Ct. 466, 80 L.Ed. 688 (1936), (Brandeis, J., concurring).

It is clear from the information before the court the extent to which the plaintiffs have been damaged financially by the failure of the Vermont Department of Social Welfare to afford them a choice between unemployment compensation and ANFC-UF. It appears from oral argument and from the stipulated facts filed by the parties that, to an extent which has not been made precisely clear, the State of Vermont supplemented the plaintiffs' unemployment compensation checks with funds from General Assistance, thereby

reducing the actual loss each plaintiff suffered when his family was disqualified from ANFC-UF. If the plaintiffs are able to make a showing that they have suffered pecuniary loss as a result of this disqualification, we consider it a proper exercise of our equitable powers to afford the plaintiffs the option of re-tendering their unemployment compensation benefits and receiving ANFC benefits in lieu thereof for the relevant weeks in which the receipt of unemployment compensation has adversely affected the financial interest of the family concerned.

The parties are directed to prepare a proposed decree for approval by the court in accordance with the views expressed in this opinion.

SUPPLEMENTAL OPINION AND ORDER

PER CURIAM.

Plaintiffs have filed a motion for rehearing on dismissal of the class action. Defendant Philbrook has filed a motion for a new trial.

Since the motion for a new trial presents nothing for consideration that was not presented to the court originally and is in essence a petition for rehearing, it is hereby denied.

While the motion for rehearing on dismissal of the class action may present viable matter, since the original decision of the court and motion here filed, the United States Court of Appeals for the Second Circuit has held in *Galvan v. Levine*, — F.2d —, —, — (2d Cir. 1973), that where the relief sought as to the class, as here, is prohibitory only, that is, seeks only declaratory or injunctive relief, and class action designation is therefore largely a formality, what is important is that the "*judgment* run to the benefit not only of the named plaintiffs but of all others similarly situated" *Id.* at —. We would assume that the State here would have understood the judgment to bind it in the future with re-

spect to all claimants, in any event. Lest there be any mistake, however, in submitting a decree for our signature pursuant to the final paragraph of the opinion dated October 17, 1973, appropriate language to insure that the decree runs for the benefit of all others similarly situated in the future is hereby directed to be included. To the extent that plaintiffs' motion seeks to have retroactive reimbursement for unnamed parties, members of plaintiffs' class, in line with the actual relief given to the named plaintiffs and intervenors, class action designation is hereby refused, such a class action being unmanageable, notice being impracticable, and defendant being put to unwarranted inequitable administrative difficulty thereby.

Page 1

The first of the three main parts of the book is a history of the English language from its beginnings in the fifth century to the present day. The second part is a study of the English language in its various dialects and varieties. The third part is a study of the English language in its various uses and functions.

APPENDIX B

United States District Court
District of Vermont

CIVIL ACTION NO. 6550

ROGER C. DEROSIA AND ARLENE M. DEROSIA, LARRY,
HAROLD, ARTHUR, MARY AND BRIAN DESORIA, MINORS,
BY THEIR MOTHER AND NEXT FRIEND, ARLENE M. DEROSIA:
ON BEHALF OF THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED;

JÉAN GLODGETT AND DEANNA GLODGETT, INDIVIDUALLY
AND ON BEHALF OF THEIR MINOR CHILD, TINA GLODGETT;
ROGER PERCY, SR. AND ROSAMOND PERCY, INDIVIDUALLY
AND ON BEHALF OF THEIR MINOR CHILDREN, SHARON,
SHEILA, ROGER, MARY, MATTHEW AND CHARON PERCY,
AND ALL OTHERS SIMILARLY SITUATED

v.

PAUL R. PHILBROOK, INDIVIDUALLY AND AS COMMISSIONER
OF THE VERMONT DEPARTMENT OF SOCIAL WELFARE;
CASPER W. WEINBERGER, INDIVIDUALLY AND AS SECRETARY
OF THE DEPARTMENT OF HEALTH, EDUCATION
AND WELFARE

ORDER OF JUDGMENT

Upon the basis of the evidence, the arguments of counsel,
and the opinions of this court dated October 17, 1973, and
December 28, 1973, it is ordered, adjudged and decreed that:

(1) 42 U.S.C. §607(b)(2)(C)(ii), 45 CRF §233.100(a)(5)(ii) and Vermont Welfare Regulation 2331.1 [sic] excludes families in which the father is unemployed from benefits only for those weeks in which the father actually receives state unemployment compensation. The disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation, and there is no compulsion to accept UCC. If the father receives UCC benefits which are less than the ANFC payment for which he qualifies, he is afforded, under the statute, an option and can reject the UCC check in favor of the ANFC payment, thereby receiving an income consistent with the state standard of need.

(2) The Department of Social Welfare shall advise applicants who have been certified as eligible for ANFC-UF that they may elect to reject their UCC payments in favor of the ANFC payment for which they are otherwise qualified.

(3) The Secretary of HEW shall approve the Vermont ANFC-UF program in accordance with the interpretation given Section 607(b)(2)(c)(ii).

(4) This order shall bind the defendants from the date of judgment with respect to all others similarly situated as the plaintiff.

(5) Plaintiffs Glodgett, Percy and Derosia shall be given the option of retendering their unemployment compensation benefits and receiving ANFC benefits in lieu thereof, less any General Assistance paid, for the relevant weeks in which the receipt of unemployment compensation has adversely affected the financial interest of the family concerned.

Upon stipulation by the parties, if the above-mentioned named plaintiffs elect to retender their UCC and GA grants, payments, taking into account those grants, would be made as follows: \$207.17 to the Glodgetts, \$342 to the Percys, and \$21.20 to the Derosias.

DATED at Burlington in the District of Vermont, this
20th day of February, 1974.

SO ORDERED.

/s/ JAMES L. OAKES,
U.S. Circuit Judge

/s/ JAMES S. HOLDEN,
U. S. District Judge

/s/ ALBERT COFFRIN,
U. S. District Judge



APPENDIX C

United States District Court
District of Vermont

CIVIL ACTION NO. 6550

PAUL R. PHILBROOK, INDIVIDUALLY AND AS COMMISSIONER
OF THE VERMONT DEPARTMENT OF SOCIAL WELFARE;
CASPER W. WEINBERGER, INDIVIDUALLY AND AS SECRETARY
OF THE DEPARTMENT OF HEALTH, EDUCATION
AND WELFARE

Appellants

v.

ROGER C. DEROSIA AND ARLENE M. DEROSIA, LARRY,
HAROLD, ARTHUR, MARY AND BRIAN DESORIA, MINORS,
BY THEIR MOTHER AND NEXT FRIEND, ARLENE M. DEROSIA,
ON BEHALF OF THEMSELVES AND ALL OTHERS

SIMILARLY SITUATED;

JEAN GLODGETT AND DEANNA GLODGETT, INDIVIDUALLY
AND ON BEHALF OF THEIR MINOR CHILD, TINA GLODGETT;
ROGER PERCY, SR. AND ROSAMOND PERCY, INDIVIDUALLY
AND ON BEHALF OF THEIR MINOR CHILDREN, SHARON,
SHEILA, ROGER, MARY, MATTHEW AND CHARON PERCY,
AND ALL OTHERS SIMILARLY SITUATED.

Appellees

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Paul R. Philbrook, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of a Three Judge District Court entered in this action on February 21, 1974.

This appeal is taken pursuant to 28 USC §1253.

Dated: April 8, 1974

/s/ DAVID L. KALIB,
Assistant Attorney General
Office of the
Attorney General
Montpelier, Vermont 05602
(802) 828-3445
Attorney for Appellant
Paul R. Philbrook

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States upon Richard Kohn, Esq., attorney for the appellees, by posting a copy of same in United States mail receptacle, first class mail, addressed to his last known office address, 26 State Street, Montpelier, Vermont, on this 8th day of April, 1974.

/s/ DAVID L. KALIB,
Assistant Attorney General

APPENDIX D

UNITED STATES CODE

42 U.S.C. §607. Dependent children of unemployed fathers; definition

(a) The term "dependent child" shall, notwithstanding section 606(a) of this title, include a needy child who meets the requirements of section 606(a) (2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 606(a) (1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

(b) The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title —

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) of this section when —

(A) such child's father has not been employed (as determined in accordance with standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

(B) such father has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment, and

(C) (i) such father has 6 or more quarters of work (as defined in subsection (d) (1) of this sec-

tion) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under and unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d) (3) of this section) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(2) provides —

(A) for such assurances as will satisfy the Secretary that fathers of dependent children as defined in subsection (a) of this section will be certified to the Secretary of Labor as provided in section 602(a) (19) of this title within thirty days after receipt of aid with respect to such children;

(B) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, designed to assure maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained; and

(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section —

(i) if, and for so long as, such child's father is not currently registered with the public employment offices in the State, and

(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

(c) Notwithstanding any other provisions of this section, expenditures pursuant to this section shall be excluded from aid to families with dependent children (A) where such expenditures are made under the plan with respect to any dependent child as defined in subsection (a) of this section, (i) for any part of the 30-day period referred to in subparagraph (A) of subsection (b) (1) of this section, or (ii) for any period prior to the time when the father satisfies subparagraph (B) of such subsection, and (B) if, and for as long as, no action is taken (after the 30-day period referred to in subparagraph (A) of subsection (b) (2) of this section), under the program therein specified to certify such father to the Secretary of Labor pursuant to section 602(a) (19) of this title.

(d) For purposes of this section —

(1) the term "quarter of work" with respect to any individual means a calendar quarter in which such individual received earned income of not less than \$50 (or which is a "quarter of coverage" as defined in section 413(a) (2) of this title), or in which such individual participated in a community work and training program under section 609 of this title or any other work and training program subject to the limitations in section 609 of this title, or the work incentive program established under part C;

(2) the term "calendar quarter" means a period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31; and

(3) an individual shall be deemed qualified for unemployment compensation under the State's unemployment compensation law if —

(A) he would have been eligible to receive such unemployment compensation upon filing application, or

(B) he performed work not covered under such law and such work, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such unemployment compensation upon filing application.

APPENDIX E

VERMONT WELFARE ASSISTANCE MANUAL

2333.1 Unemployed Father

An "unemployed father" is one whose minor children are in need because he is out of work, is working part-time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that:

1. He has not refused, without good cause, within this 30 day period a bona fide offer of employment or training for employment, and is currently registered with the State employment service.
2. He has 6 or more quarters of work in any 13 calendar quarter period ending within one year prior to application for assistance, or received or was qualified to receive Unemployment Compensation within one year prior to application for assistance.
3. He is not receiving Unemployment Compensation during the same *week* as assistance is granted.
4. If employed, he is employed less than 100 hours per month: or exceeds that standard for the month of application if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100 hour standard for the two months prior to application and is expected to be under the standard during the next month.

Full-time employment, although earnings may be insufficient to meet family need, is not considered "unemployment." Income from fewer than four boarders is not considered "employment."

When an applicant father states that his physical or mental health prevents him from obtaining gainful employment, eligibility shall be established on the basis of a medical determination of incapacity rather than unemployment.

INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Questions presented.....	2
Statute and regulation involved.....	2
Statement.....	3
The question is substantial.....	6
Conclusion.....	15
Appendix A.....	1A
Appendix B.....	16A
Appendix C.....	18A
Appendix D.....	20A

CITATIONS

Cases:

<i>Adickes v. S. H. Kress and Co.</i> , 398 U.S. 144.....	16
<i>Aguayo v. Richardson</i> , 473 F. 2d 1090.....	16
<i>Almenares v. Wyman</i> , 453 F. 2d 1075, certiorari denied, 405 U.S. 944.....	15
<i>Bivens v. Six Unknown Agents</i> , 403 U.S. 388.....	15
<i>Burr v. Smith</i> , 322 F. Supp. 980, affirmed, 404 U.S. 1027.....	13
<i>California Human Resources Dept. v. Java</i> , 402 U.S. 121.....	8, 14
<i>Christian v. New York State Dept. of Labor</i> , 414 U.S. 614.....	16
<i>City of Greenwood v. Peacock</i> , 384 U.S. 808.....	15
<i>Flast v. Cohen</i> , 392 U.S. 83.....	2
<i>Georgia v. Rachel</i> , 384 U.S. 780.....	15
<i>Gregorie v. Biddle</i> , 177 F. 2d 579, certiorari denied, 339 U.S. 949.....	15

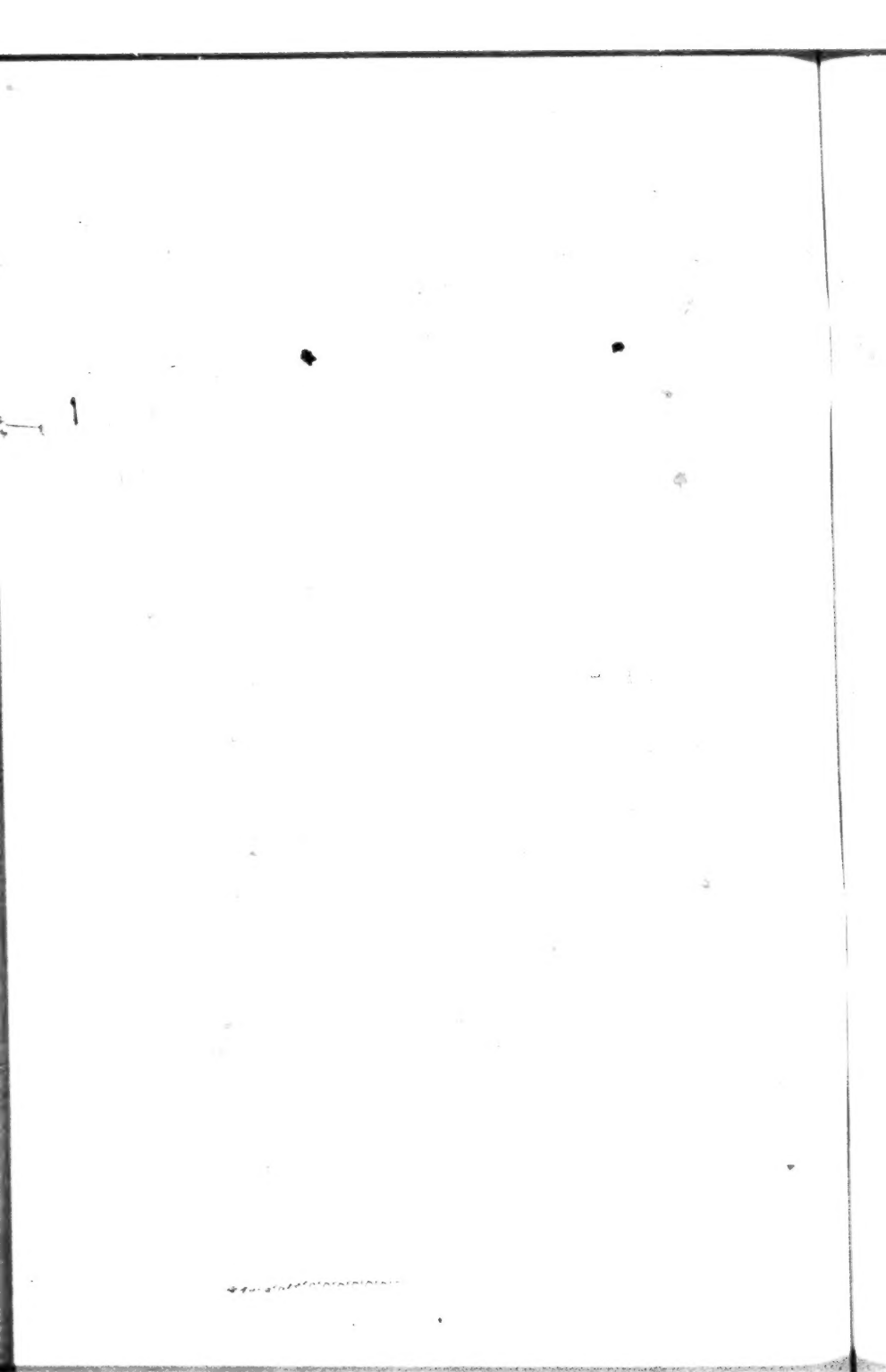
II

Cases—Continued

	Page
<i>Hagans v. Lavine</i> , No. 72-6476, decided March 25, 1974.....	2
<i>King v. Smith</i> , 392 U.S. 309.....	2, 17
<i>Lynch v. Household Finance Corp.</i> , 405 U.S. 538.....	16
<i>Moor v. County of Alameda</i> , 411 U.S. 693.....	16
<i>Norton v. McShane</i> , 332 F. 2d 855, certiorari denied, 380 U.S. 981.....	15
<i>Ramirez v. Weinberger</i> , 363 F. Supp. 105, affirmed, No. 73-5972 (decided March 18, 1974).....	16
<i>Stinson v. Finch</i> , 317 F. Supp. 581.....	16
<i>Wheeldin v. Wheeler</i> , 373 U.S. 647.....	15
<i>Williams v. Rogers</i> , 449 F. 2d 513, certiorari denied, 405 U.S. 926.....	15
Constitution, statutes and regulations:	
United States Constitution:	
Fifth Amendment.....	5
Fourteenth Amendment.....	5
Social Security Act:	
Sections 301-304, 42 U.S.C. 501-504.....	14
Section 401, 42 U.S.C. 601 <i>et seq.</i>	3
Section 402(a)(7), 42 U.S.C. 602(a)(7)....	8
Section 406(a), 42 U.S.C. 606(a).....	4
Section 407(b)(2)(C), 42 U.S.C. 607(b)(2)(C).....	2-3, 6, 14
Section 407(b)(2)(C)(ii), 42 U.S.C. 607(b)(2)(C)(ii).....	2, 4, 5, 6, 7, 11, 12, 13
Section 420, 42 U.S.C. 620.....	13
Sections 901-908, 42 U.S.C. 1101-1108....	14
75 Stat. 76.....	10
81 Stat. 882.....	10

III

Constitution, statutes and regulations—Con.		Page
28 U.S.C. 1343(3).....	5, 15, 16	
28 U.S.C. 2281.....	2, 5	
28 U.S.C. 2282.....	2, 5	
21 V.S.A. 1324-1327.....	14	
21 V.S.A. 1358-1359.....	14	
33 V.S.A. 2554.....	13	
33 V.S.A. 2703.....	13	
33 V.S.A. 3003.....	13	
45 C.F.R. 200, <i>et seq.</i>	3	
45 C.F.R. 233.20(a)(3)(ix).....	12	
Vermont Welfare Regulation 2333.1.....	2, 3, 4, 5	
Miscellaneous:		
Department of Health, Education, and Welfare, Handbook of Public Assistance Administration, Pt. IV, §§ 3120, 3140(4) & 3140(6) (1964).....	12	
H. Rep. No. 615, 74th Cong., 1st Sess.	9, 10	
H. Rep. No. 1030, 90th Cong., 1st Sess.	11	
Hearings before the Senate Committee on Finance, on S. 1130, Report of the Committee on Economic Security, 74th Cong., 1st Sess.	8	
S. Rep. No. 628, 74th Cong., 1st Sess.	10	
Hearings before the Senate Committee on Finance, on H.R. 1208C, 90th Cong., 1st Sess.	11	



In the Supreme Court of the United States

OCTOBER TERM, 1974

No. —

CASPAR W. WEINBERGER, SECRETARY OF HEALTH,
EDUCATION, AND WELFARE, APPELLANT

v.

JEAN GLODGETT, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF VERMONT

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The original (App. A, *infra*, pp. 1A-15A) and supplemental (App. B, *infra*, pp. 16A-17A) opinions of the district court are reported at 368 F. Supp. 211 and 218.

JURISDICTION

The judgment of the district court (App. C, *infra*, pp. 18A-19A) was entered on February 20, 1974. The government's notice of appeal to this Court (App. D, *infra*, p. 20A) was filed on April 19, 1974. By orders

entered June 12, 1974, and July 10, 1974, Mr. Justice Marshall extended the time for docketing the appeal to August 17, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1253, since the decision below was entered by a three-judge court properly convened under 28 U.S.C. 2281 and 2282 to consider this action to restrain the enforcement of 42 U.S.C. 607(b)(2)(C)(ii) and Vermont Welfare Regulation 2333.1 as unconstitutional. See *King v. Smith*, 392 U.S. 309; *Flast v. Cohen*, 392 U.S. 83. As this Court recently recognized in *Hagans v. Lavine*, No. 72-6476, decided March 25, 1974, slip op. p. 14, an appeal lies to this Court where a three-judge court was properly convened, even though the court disposed of the case on a nonconstitutional ground.

QUESTION PRESENTED

Whether the district court properly construed 42 U.S.C. 607(b)(2)(C)(ii), and Vermont Welfare Regulation 2333.1, which bar families from receiving benefits under the federally assisted Aid to Families with Dependent Children ("AFDC") program if the father receives unemployment compensation, as granting the father the option to decline unemployment compensation for which he is eligible in order for his family to obtain larger AFDC benefits.

STATUTE AND REGULATION INVOLVED

Section 407(b)(2)(C) of the Social Security Act, as amended, 42 U.S.C. 607(b)(2)(C), requires that, to be eligible for federal financial assistance, state AFDC programs must provide:

for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section—

* * * *

(ii) with respect to any week for which *such* child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

Vermont Welfare Regulation 2333.1 provides in part (emphasis in original):

An "unemployed father" is one whose minor children are in need because he is out of work, is working part time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that:

* * * *

3. He is not receiving Unemployment Compensation during the same *week* as assistance is granted.

STATEMENT

This case arises under Title IV of the Social Security Act, 42 U.S.C. 601, *et seq.*, which governs the Aid to Families with Dependent Children ("AFDC") program. The AFDC program is designed to provide public assistance on behalf of dependent children through a system of federal and state funding. In order to receive federal funding, state AFDC plans must comply with certain requirements set forth in Title IV, *et seq.*, as implemented by regulations of the Department of Health, Education, and Welfare, 45 C.F.R. 200, *et seq.*

The AFDC program is directed primarily at children who are dependent because of the "death, continued absence from the home, or physical or mental incapacity of a parent * * *." 42 U.S.C. 606(a). In addition, state AFDC plans may include children who are dependent because of the unemployment of their father. If a state plan includes children of unemployed fathers, Section 407(b)(2)(C)(ii) of the Act, 42 U.S.C. 607(b)(2)(C)(ii), requires that the state plan provide for the denial of AFDC benefits "with respect to any week for which such child's father receives unemployment compensation * * *." The Vermont AFDC plan includes children of unemployed fathers and Vermont Welfare Regulation 2333.1 requires denial of AFDC benefits during any week when such fathers receive unemployment compensation.

This action was brought against the Secretary of HEW and the Commissioner of Vermont's Department of Social Welfare by three families claiming AFDC benefits. Each of the families was denied benefits on the ground that the father was receiving state unemployment compensation. In each instance, the amount of the unemployment compensation was less than the amount of AFDC benefits.¹

¹ A comparison on a monthly basis of the AFDC benefits denied and unemployment compensation received by the plaintiffs is shown below (App. A, *infra*, pp. 2A-3A):

	AFDC	Unemployment compensation
Glodgett.....	\$239	\$60
Derosia.....	394	56
Percy.....	410	172

Challenging the denial of AFDC benefits, the plaintiffs sought to have Section 407(b)(2)(C)(ii) and Vermont Welfare Regulation 2333.1 declared invalid and their enforcement enjoined as contrary to the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments (App. A, *infra*, p. 3A). Plaintiffs also sought to represent the class of all Vermont families excluded from AFDC benefits because the father receives unemployment compensation (App. A, *infra*, pp. 4A-5A).

The three-judge district court did not reach the constitutional question because it awarded plaintiffs relief on a statutory ground. Initially, the court held that a three-judge court was appropriate under 28 U.S.C. 2281 and 2282 (App. A, *infra*, p. 4A). Also, although the court's original opinion held that plaintiffs had not proved that their suit met the requisites for a class action (App. A, *infra*, pp. 4A-7A), its supplemental opinion states that the class action designation is largely a formality in that the judgment will bind the State as to all similarly situated persons in the future (App. B, *infra*, p. 16A). Jurisdiction over both state and federal defendants was sustained under 28 U.S.C. 1343(3) (App. A, *infra*, pp. 7A-9A).

On the merits, the court held that Section 407(b)(2)(C)(ii) affords fathers the option of refusing unemployment compensation in order to obtain the higher AFDC benefits. In its view, the language of this AFDC provision indicates "that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation" (App. A, *infra*, p. 13A).

The court's judgment incorporates this statutory construction holding as declaratory relief, orders Vermont to advise AFDC applicants of their option to refuse unemployment compensation, and further orders the Secretary of HEW to approve Vermont's program for federal assistance in accordance with the court's construction of Section 407(b)(2)(C) (App. C, *infra*, pp. 18A-19A). The Glodgett, Percy, and Derosia families were awarded retroactive relief, but relief as to all similarly situated Vermont AFDC applicants was stayed pending review by this Court. The judgment grants the named plaintiffs the option of retendering their unemployment compensation plus any amounts received under Vermont's non-federally assisted general assistance program, in order to obtain AFDC benefits (App. C, *infra*, p. 19A). By stipulation, if this option is exercised, the Glodgetts will receive a total of \$207.17; the Percys, \$342; and the Derosias \$21.20 (App. C, *infra*, p. 19A).

From this judgment, both the state (No. 73-1820) and the federal defendants appeal.

THE QUESTION IS SUBSTANTIAL

This appeal presents a substantial question in the administration of the AFDC program under the Social Security Act, which warrants plenary review by this Court. Section 407(b)(2)(C)(ii) of that Act, 42 U.S.C. 607(b)(2)(C)(ii), requires denial of AFDC benefits for any week during which a father "receives unemployment compensation" under a state or federal unemployment compensation law. The question is whether this provision permits a father to obtain

AFDC benefits by waiving state unemployment benefits which he is entitled to receive.

As we explain below, the structure of the Act, its legislative history and its settled administrative interpretation show that Congress intended AFDC payments to be made only if state unemployment benefits are not available. If a father qualifies for unemployment benefits, he is disqualified for AFDC payments. Contrary to the holding of the district court, he cannot avoid the statutory prohibition in Section 407(b)(2)(C)(ii) by refusing those benefits and then claiming that, because of his voluntary waiver of them, he is not within the statutory prohibition against making AFDC payments to someone who "receives" unemployment benefits.²

² In their complaint in the district court, plaintiffs challenged only the constitutionality of Section 407(b)(2)(C)(ii) and the Vermont regulation, stating that that Section "provides that assistance * * * cannot be granted if the father is eligible for or receiving unemployment compensation." Complaint ¶2. See also, Transcript of March 5, 1973, p. 2. In the memorandum supporting our motion to dismiss this complaint or alternatively for judgment on the pleadings or summary judgment, we stated, "It is the receipt of unemployment benefits and not merely eligibility for such benefits which is the operative factor here; Section 607(b)(2)(C)(ii) turns on receipt of unemployment compensation, not eligibility for such benefits." Memorandum of Law In Support of Motions of Defendant Richardson, filed August 16, 1972, p. 7 n. 2. Subsequently, after the statutory construction issue was raised at oral argument (Transcript of March 5, 1973, pp. 42-44, 55-57), we submitted a supplemental memorandum stating:

"* * * Congress did not want to cut off AFDC solely on the basis of *eligibility* for unemployment compensation, where a delay of weeks between eligibility and actual payment might result from forces beyond the recipient's control, e.g., state inefficiency or red tape. On the other hand, a recipient clearly may

The basic structure of the Social Security Act contemplates that state unemployment compensation programs would be the primary source of income to unemployed fathers, and that the federally-aided AFDC payments would be made only where such state compensation was not available. In other words, one aspect of the standards in the Social Security Act that AFDC benefits would be provided only to the extent that parents "need" them (Section 402(a)(7)) is that AFDC aid is not needed if unemployment compensation is available.

1. a. AFDC was a part of the original Social Security Act of 1935, 49 Stat. 620. In its original form, AFDC was not available to children of unemployed fathers. Congress viewed unemployment compensation as the means by which persons temporarily out of work would be aided until they found new employment. As this Court recognized in *California Human Resources Dept. v. Java*, 402 U.S. 121, 131, the unemployment compensation program was intended to

not take advantage of Congress' concern in this area by purposefully refusing unemployment compensation for which he is eligible, thereby defeating the comprehensive unemployment—AFDC scheme of Congress."

Memorandum of Law, filed March 27, 1973, p. 6. In this memorandum the government thus clarified its earlier position. The district court's statement that the defendants concur in its view that "the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation" (App. A, *infra*, p. 13A) overlooks the clarifying statement in our memorandum of March 27, 1973. In any event, to the extent that our initial statement may be considered inconsistent with our present position, our further study has convinced us that one who refuses available unemployment compensation is barred from AFDC by Section 407(b)(2)(C)(ii).

be the "first line of defense for * * * [a worker] ordinarily steadily employed,"³ and its purpose was "to enable workers 'to tide themselves over, until they get back to their old work or find other employment, without having to resort to relief'" (quoting H. Rep. No. 615, 74th Cong., 1st Sess. 7).⁴

³ Quoting the Hearings before the Senate Committee on Finance, on S. 1130, Report of the Committee on Economic Security, 74th Cong., 1st Sess. 1321.

⁴ The pertinent part of this House Report states:

"In normal times [unemployment compensation] will enable most workers who lose their jobs to tide themselves over, until they get back to their old work or find other employment, without having to resort to relief. * * * Unemployed workmen who cannot find other employment within reasonable periods will have to be cared for through work relief or other forms of assistance, but unemployment compensation will greatly reduce the necessity for such assistance. Unemployment compensation is greatly preferable to relief because it is given without any means test."

Like this House Report, the Senate Report also shows that the original design was that resort to AFDC would be made only if unemployment compensation had been exhausted or was unavailable:

"Such unemployment compensation is not a complete safeguard against the hazard of unemployment. In periods of prolonged depression many workmen will exhaust their compensation benefits before they find other employment. This will hold true of some workmen even in periods of prosperity. Supplemental to unemployment compensation there will still be need for work relief for those whose compensation rights have been exhausted, as well as for workers who are outside of the compensation system.

"But unemployment compensation does have real value for many workers. In normal times most workers will secure other employment before exhaustion of their benefit rights. * * * For the great bulk of industrial workers unemployment compensation will mean security during the period following unemployment while they are seeking another job, or are waiting for a return to their old position. In most cases the com-

In 1961, the AFDC program was broadened to cover children of an unemployed parent (father or mother), but Congress continued to view AFDC and unemployment compensation as mutually exclusive programs, with the former available only if the latter was not. Under the 1961 amendments, states participating in the AFDC program were authorized to deny part of or all AFDC benefits "if the unemployed parent * * * receives unemployment compensation." 75 Stat. 76.

In 1968 Congress amended the AFDC statute to require that AFDC be denied if and as long as such child's "father * * * receives unemployment compensation under an unemployment compensation law of a State or of the United States." 81 Stat. 882, 883. Once again, Congress thereby reaffirmed the policy that AFDC be available only as a last resort.

Throughout the development of the federally-assisted AFDC program, Congress endeavored to encourage the states to develop their own programs of financial aid to the unemployed. State participation in AFDC is optional. Congress intended that the financial burdens of AFDC upon the federal government be reduced, wherever other sources of income, including unemployment compensation, were available. The prohibition upon payment of AFDC when unemployment compensation is available furthers two important social objectives. (1) It reduces the burdens of public assistance by providing both a source of in-

compensation they will receive will be all that they will need. While unemployment compensation will not do away entirely with the necessity for relief, it should very materially reduce the costs of relief in future years."

S. Rep. No. 628, 74th Cong., 1st Sess. 11-12 (1935).

come and a system for maintaining contact between employers and the labor force. (2) It thereby increases the likelihood that the unemployed will obtain work and escape the need for any kind of public assistance.

The legislative history of the 1968 amendment shows that Congress intended that an unemployed father would be required to exhaust unemployment compensation benefits in order to receive AFDC. The Conference Report on the 1968 Act explained:

* * * Section 407 of the Social Security Act, as amended by section 203(a) of the House bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to exclude fathers who do not have 6 or more quarters of work in any 13-calendar-quarter period ending within one year prior to the application for aid, and fathers who receive (*or are qualified to receive*) any unemployment compensation under State law.

The Senate amendments removed these exclusions, and restored the provision of present law under which a State may at its option wholly or partly deny AFDC for any month where the father receives unemployment compensation during the month. * * *

The Senate recedes * * *. [H. Rep. No. 1030, 90th Cong., 1st Sess. 57 (emphasis added).]

In stating that "fathers who * * * are qualified to receive" unemployment compensation cannot receive AFDC, Congress reiterated its settled philosophy that AFDC was to be given only if unemployment compensation was not available. A father's waiver of such compensation does not make it unavailable.

The same view is reflected in a report of the Senate Committee on Finance, which summarized the major recommendations presented to the Committee on the House version of the 1968 Act.⁵ In summarizing testimony against Section 407(b)(2)(C)(ii), the report described this provision as *"not allowing payment if father is eligible for unemployment compensation."* Brief Summary of Major Recommendations Presented in Oral and Written Statements During Public Hearings before Senate Commission^{the} on Finance, on H.R. 12080, 90th Cong., 1st. Sess., p. 32 (Committee Print, 1967). Like the Conference Committee, the Senate Committee thus also viewed the provision as barring AFDC payments to persons eligible, *i.e.*, qualified, for unemployment benefits.

b. When Congress amended Section 407(b)(2)(C)(ii) in 1968, it presumably acted with awareness of the Secretary's interpretation of the related provisions of the Act. At that time, as now, Section 402(a)(7) of the Act required that, in determining need of AFDC applicants, a state must consider any other income or resources of applicants. Reflecting the fact that Congress intended AFDC to be a program of last resort, the pertinent regulations provided that states must consider both actual and "potential sources of income that can be developed to a state of availability." HEW's Handbook of Public Assistance Administration, Pt. IV, § 3120 (1964), now 45 C.F.R. 233.20 (a)(3)(ix). Moreover, section 3140(4) of the Handbook states that the Act "does not give any individual

⁵ The initial House version of Section 407(b)(2)(C)(ii) was identical to the one Congress enacted.

a right to have his needs met out of an assistance program because of his refusal to accept any resource that is available to him upon application." Section 3140(6) of the Handbook specifically includes unemployment compensation as one such resource.⁶ Thus, when Congress used the word "receives" in Section 407(b)(2)(C)(ii), it legislated in light of the Secretary's view that AFDC benefits could not be paid to the extent that unemployment compensation was available.

c. In the only other case we know of which considered the question, a three-judge district court upheld our interpretation of the statute. In *Burr v. Smith*, 322 F. Supp. 980 (W.D. Wash.), affirmed, 404 U.S.

⁶ These statements were made in the context of requiring an AFDC applicant to apply for reduced old-age benefits at age 62, rather than awaiting eligibility for full benefits at age 65. The relevant portions of the Handbook provide:

"§ 1340(4). * * * Without question, the Act intends that such individuals should have a legal right to decide whether to file for the reduced benefits or wait until they reach sufficient age to receive benefits without reduction, just as any individual has the legal right to decide that he will not apply for any OASDI benefits under any circumstances. The federal act, however, does not give any individual a right to have his needs met out of an assistance program because of his refusal to accept any resource that is available to him upon application.

"§ 3140(6). In addition to OASDI, other statutory benefits to which applicants and recipients for public assistance may qualify, include unemployment insurance, temporary disability insurance, railroad retirement benefits, civil service retirement benefits, other government retirement benefits (Federal, State, county and local), and veterans benefits.

"It is important that the State's policies and procedures for determining eligibility on the basis of need include clear instruction to staff for identifying cases in which such statutory benefits might be a resource, and, with respect to such cases, the process of determining the availability of such resources."

1027, AFDC applicants challenged the constitutionality of the Washington statute and welfare regulation implementing Section 407(b)(2)(C). The regulation provided: "An otherwise eligible child shall be ineligible for AFDC-E with respect to any week for which his father receives unemployment compensation." 322 F. Supp. at 983. The district court in *Burr* held that "[a] father cannot avoid disqualification simply by failing to register for and receive unemployment compensation." 322 F. Supp. at 984, n. 5. The *Burr* court then concluded that, as thus construed, the exclusion provision was valid.

2. The issue is important in the administration of the AFDC program. Twenty-four states in addition to Vermont participate in the program for unemployed fathers. Since the amount the states pay as unemployment compensation frequently varies from family to family, it is impossible to estimate in what proportion of the cases AFDC payments would exceed state unemployment insurance benefits. The instances of such excess are likely to be substantial, however, and whenever there is such difference, the decision below is likely to lead to the shifting of a portion of the unemployment compensation that the state normally would furnish to the federally funded AFDC.⁷ Com-

⁷ The AFDC program is funded by appropriations from general federal and state revenues. 42 U.S.C. 620; 33 V.S.A. 2554, 2703. Vermont's general assistance program is also funded by general state revenues. 33 V.S.A. 3003. In contrast, unemployment compensation in Vermont and other states is paid from a separate fund, which consists of funds collected from private employers, 21 V.S.A. 1324-1327, 1358-1359, and money credited to the State's account in the federal Unemployment Trust Fund. 42 U.S.C. 501-504, 1101-1108; *California Human Resources Dept. v. Java*, *supra*, 402 U.S. at 126.

missioner Philbrook estimates that for fiscal year 1975, the additional AFDC costs to Vermont under the district court's decree could be \$1 million (J.S. in No. 73-1820, p. 21, n. 21). The additional federal share in Vermont would then be approximately \$2 million.

As we have shown above, Congress viewed unemployment insurance as the primary source through which unemployed parents would receive financial assistance, and intended AFDC to be available only when unemployment insurance was unavailable. The effect of the decision below would be to permit the federally assisted AFDC program to be used to subsidize unemployed parents for what they consider inadequacies in a state compensation program. That is not what Congress intended when it barred AFDC benefits to persons who "receive" unemployment compensation.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.⁸

Respectfully submitted.

ROBERT H. BORK,

Solicitor General.

CARLA A. HILLS,

Assistant Attorney General.

WILLIAM L. PATTON,

Assistant to the Solicitor General.

LEONARD SCHAITMAN,

ANTHONY J. STEINMEYER,

Attorneys.

AUGUST 1974.

⁸ The district court took jurisdiction of ~~the~~ this case solely under 28 U.S.C. 1343(3), which gives district courts jurisdiction over

actions "[t]o redress the deprivation, under color of any State law, * * * of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens * * *." The Social Security Act is not an "Act of Congress providing for equal rights * * *." *Almenares v. Wyman*, 453 F. 2d 1075, 1082, n. 9 (C.A. 2), certiorari denied, 405 U.S. 944; cf. *Georgia v. Rachel*, 384 U.S. 780, 792; *City of Greenwood v. Peacock*, 384 U.S. 808, 825. The Secretary's actions that were challenged in this case as unconstitutional were taken not "under color of any State law," but under federal law. See *Wheeldin v. Wheeler*, 373 U.S. 647, 652; *Birens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 398, n. 1 (Harlan, J. concurring); *Gregoire v. Biddle*, 177 F. 2d 579, 581 (C.A. 2) (L. Hand, J.), certiorari denied, 339 U.S. 949; *Norton v. McShane*, 332 F. 2d 855, 862 (C.A. 5), certiorari denied, 380 U.S. 981; *Williams v. Rogers*, 449 F. 2d 513, 517 (C.A. 8), certiorari denied, 405 U.S. 926.

In *Lynch v. Household Finance Corp.*, 405 U.S. 538, 547, this Court stated that "in suits against federal officials for alleged deprivations of constitutional rights, it is necessary to satisfy the amount-in-controversy requirement for federal jurisdiction." The district court made no finding that this case involves more than \$10,000.

The *Lynch* case seemingly indicates that the district court had no basis for jurisdiction over the Secretary in this case under 28 U.S.C. 1343(3). Other three-judge district courts have held that that Section does not confer jurisdiction over the Secretary in actions challenging the constitutionality of the AFDC statute. *Stinson v. Finch*, 317 F. Supp. 581 (N.D. Ga.); *Ramirez v. Weinberger*, 363 F. Supp. 105 (N.D. Ill.), affirmed, No. 73-5972 (March 18, 1974).

The district court relied primarily (App. A. *infra*, p. 7A) upon *Aguayo v. Richardson*, 473 F. 2d 1090 (C.A. 2). There jurisdiction over federal and state officials in an AFDC action was sustained under Section 1343(3) by extending the doctrine of pendent jurisdiction to parties, as well as claims, not otherwise subject to the court's jurisdiction. In *Moor v. County of Alameda*, 411 U.S. 693, 710-717, this Court recognized that the pendent party doctrine presented "a subtle and complex question with far-reaching implications," 411 U.S. at 715, which the Court found it unnecessary to decide because it concluded that the district court there had not abused its discretion by refusing to exercise such jurisdiction on the facts of that case. In *Chris-*

tian v. New York State Dept. of Labor, 414 U.S. 614, 617, n. 3, this Court left open the question whether Section 1343(3) confers jurisdiction over federal officials where there has been joint participation between state and federal officers. Cf. *Adickes v. S. H. Kress and Co.*, 398 U.S. 144. Although "[t]he AFDC program is based upon a scheme of cooperative federalism," *King v. Smith*, 392 U.S. 309, 316, the interests of the two sovereigns do not necessarily coincide. See *supra*, pp. 14-15.

The question of the district court's jurisdiction over the Secretary in this case is difficult and complex. We believe there is no need for the Court to decide it here, however. If the Court agrees with our view that the statute does not permit AFDC payments to an individual who is eligible for unemployment compensation but waives it, then the case should be remanded for the district court to decide appellees' constitutional challenges to the statute as thus construed. On such remand, it would be appropriate to direct the district court to consider the jurisdictional issue further. If, on the other hand, this Court agrees with the district court's interpretation of the statute in this case in which jurisdiction over the state defendant has obviously been properly invoked, the jurisdictional question with respect to the Secretary would become inconsequential since the Secretary as well as the State would, of course, administer the statute in accordance with this Court's interpretation of it.

APPENDIX A

United States District Court for the District of
Vermont

[Filed October 23, 1973]

JEAN GLODGETT AND DEANNA GLODGETT, INDIVIDUALLY
AND ON BEHALF OF THEIR MINOR CHILD, TINA GLOD-
GETT

ROGER PERCY, SR. AND ROSAMOND PERCY, INDIVIDUALLY
AND ON BEHALF OF THEIR MINOR CHILDREN, SHARON,
SHEILA, ROGER, MARY, MATTHEW AND CHARON
PERCY, AND ALL OTHERS SIMILARLY SITUATED, AND

ROGER C. DEROSIA AND ARLENE M. DEROSIA; LARRY,
HAROLD, ARTHUR, MARY AND BRIAN DEROSIA, MINORS,
BY THEIR MOTHER AND NEXT FRIEND, ARLENE M.
DEROSIA; ON BEHALF OF THEMSELVES AND ALL
OTHERS SIMILARLY SITUATED, INTERVENORS

v.

JOSEPH BETT, INDIVIDUALLY AND AS COMMISSIONER OF
THE VERMONT DEPARTMENT OF SOCIAL WELFARE;
ELLIOTT RICHARDSON, INDIVIDUALLY AND AS SECRE-
TARY OF THE DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE

Civil Action No. 6550

OPINION

HOLDEN, DJ.

The Vermont Department of Social Welfare denies payment under its "Aid to Needy Families with Children" (ANFC) program to families in which the

father receives unemployment compensation.¹ During any week in which the father receives unemployment benefits, his family is held ineligible for any ANFC payments, even if the unemployment payment is less than the ANFC payment which the family otherwise would have received. Vermont must operate its ANFC program in this manner in order for the ANFC-UF ("Aid to Needy Families with Children—Unemployed Father") segment of the program to receive federal financial assistance under the federal "Aid to Families with Dependent Children" (AFDC) program.²

The named plaintiffs, Glodgett, Percy and Derosia, are the parents and minor children of Vermont families who were denied ANFC assistance because of the receipt of unemployment compensation by the father in each of these families. On December 17, 1971, the Glodgett family's application for ANFC was accepted and they were allotted a monthly benefit of \$239.00. On January 12, two days after Mr. Glodgett began

¹ Vermont Welfare Regulation 2333.1 provides in part:

"An 'unemployed father' is one whose minor children are in need because he is out of work, is working part time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that:

* * * * *

"3. He is not receiving Unemployment Compensation during the same week as assistance is granted."

² Although each state may refuse to participate in the federal welfare program, once a state decides to participate it must maintain a system consistent with the Social Security Act. See *Townsend v. Swank*, 404 U.S. 282, 285 (1971); *Rosado v. Wyman*, 397 U.S. 397, 419-20 (1970); *King v. Smith*, 392 U.S. 309, 316-317 (1968). If a state elects to provide ANFC benefits to families with unemployed fathers (ANFC-UF), 42 U.S.C. § 607(b)(2)(C)(ii) requires that the state plan must deny benefits under § 607 during any week in which the father receives unemployment compensation. See text, *infra*.

receiving unemployment compensation from New Hampshire of \$14.00 per week, he was notified by the state that his ANFC payments would be terminated as of February 16, 1972, by reason of his receiving unemployment compensation. The ANFC grant was reinstated soon after Mr. Glodgett ceased receiving unemployment benefits in March.

When Roger Percy's employment as a trucker was suspended, he began receiving unemployment benefits of \$172.00 per month. Because of his receipt of unemployment compensation, his family was denied ANFC payments which would have totalled \$410.00 per month, had the family not been disqualified.

On October 25, 1972, the Derosia family qualified for ANFC assistance in the amount of \$394.00 per month. On November 6 Mrs. Derosia notified Social Welfare that the family was receiving unemployment compensation of \$56.00 per month. For this reason the Derosias' ANFC grant was terminated as of December 1, 1972.

The plaintiffs seek injunctive and compensatory remedies on their own behalf and also on behalf of the class they claim to represent. More particularly, they seek the following relief: permission to maintain this action as a class action; a declaration that 42 U.S.C. § 607(b)(2)(C)(ii) and Vermont Welfare Regulation 2333.1 are unconstitutional because they respectively violate the Due Process Clause of the Fifth Amendment and the Equal Protection Clause of the Fourteenth Amendment. They seek an order enjoining the enforcement of the statute and regulation against the plaintiff class and compensatory ANFC benefits paid retroactively to the plaintiffs and class in the same amount that they would have been paid under 42

U.S.C. § 606,³ or as if the mother, instead of the father, had been receiving unemployment compensation.⁴ They further request an order directing the Secretary of HEW to approve the Vermont ANFC-UF program without requiring the inclusion of a provision disqualifying families with fathers receiving unemployment compensation; and such further relief as the court deems appropriate. At oral argument the plaintiffs advanced an additional statutory claim, contending that Vermont Welfare Regulation 2333.1 is enforced inconsistently with 42 U.S.C. § 607(b)(2)(C)(ii).

A three-judge court was convened, as required by 28 U.S.C. §§ 2281-2282, since injunctive relief is sought against state and federal enactments on constitutional grounds. The defendant Betit at the time the action was commenced was Commissioner of Social Welfare for the State of Vermont. The defendant Richardson was then Secretary of the Department of Health, Education, and Welfare. All parties have moved for summary judgment. Both defendants have moved to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted.

Class Action Status

The named plaintiffs contend they are representative of a class of Vermont families deprived of ANFC

³ Section 606, through the definition of "dependent child", authorizes payments to families in which a child has been deprived of parental support by reason of the death, absence or incapacity of a parent. See text, *infra*.

⁴ Section 607(b)(2)(C)(ii) provides for the disqualification from ANFC-UF benefits of families in which the father receives unemployment payments, but does not disqualify families in which the mother receives unemployment benefits. See text, *infra*.

because the father receives unemployment compensation. In their complaint they request certification of this suit as a class action.

While the defendants do not contest the class action status of this suit, before the action may so proceed the court is called upon to determine whether the action is maintainable as a class suit. Fed. R. Civ. P. Rule 23(c)(1);⁵ *Jackson v. Cutter Laboratories*, 338 F. Supp. 882, 886 (E.D. Tenn. 1970). An action is not maintainable as a class action merely because it is so designated in the pleadings. *Cash v. Swifton Land Corporation*, 434 F. 2d 569, 571 (6th Cir. 1970); *In re Swan-Finch Oil Corporation*, 279 F. Supp. 386, 391 (S.D. N.Y. 1967). To the contrary, the plaintiffs in a purported class action bear the burden of establishing that their action meets the prerequisites of Rule 23. *Rossin v. Southern Union Gas Company*, 472 F. 2d 707, 712 (10th Cir. 1973); *Poindexter v. Teubert*, 462 F. 2d 1096, 1097 (4th Cir. 1972); *Daye v. Commonwealth of Pennsylvania*, 344 F. Supp. 1337, 1342 (E.D. Pa. 1972); *Clark v. Thompson*, 206 F. Supp. 539, 542 (S.D. Miss. 1962), aff'd 313 F. 2d 637 (5th Cir. 1963), cert. denied 375 U.S. 951 (1963); *Free World Foreign Cars, Inc. v. Alfa Romeo*, 55 F.R.D. 26, 29 (S.D. N.Y. 1972); see *Demarco v. Edens*, 390 F. 2d 836, 845 (2d Cir. 1968); *Phillip v. Sherman*, 197 F. Supp. 866, 869 (N.D. N.Y. 1961). This burden imposes upon the plaintiffs in a purported class action the responsibility to move for formal certification of their class action by the court under Rule 23(c)(1). *Herbst v. Able*, 45 F.R.D. 451,

⁵ Rule 23(c)(1) provides:

"(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained."

453 (S.D. N.Y. 1968); *Ziegler v. Gibraltar Life Insurance Company*, 43 F.R.D. 169, 170 (D. S.D. 1967).

In this case, beyond their request for certification in their complaint, the plaintiffs have not sought a formal determination of class action status. Thus the vital issues concerning the adequacy of representation which underly any representative action remain unattended and unresolved. The question of adequacy of representation, see *Hansberry v. Lee*, 311 U.S. 32, 41-43 (1940); *Herbst v. Able*, supra at 453, has not been answered. Nor have important issues concerning notice: whether notice is required not only if the damages aspect of the action is to be maintained, see *Eisen v. Carlisle & Jacquelin*, 479 F. 2d 1005, 1015 (2d Cir. 1973), but also if injunctive relief is sought on behalf of the class under Rule 23(b)(2), compare *Eisen v. Carlisle & Jacquelin*, 391 F. 2d 555, 564-565 (2d Cir. 1968); *Schrader v. Selective Service System Local Board No. 76 of Wisconsin*, 470 F. 2d 73, 75 (7th Cir. 1972); *Zachary v. Chase Manhattan Bank*, 52 F.R.D. 532, 535 (S.D. N.Y. 1971), with *Yaffe v. Powers*, 454 F. 2d 1362, 1366 (1st Cir. 1971); *Johnson v. Georgia Highways Express, Inc.*, 417 F. 2d 1122, 1125 (5th Cir. 1969); *Woodward v. Rogers*, 344 F. Supp. 974, 980 N. 10 (D. D.C. 1972); *Vaughns v. Board of Education of Prince George's County*, 355 F. Supp. 1034, 1035 (D. Md. 1972); *Northern Natural Gas Co. v. Grounds*, 292 F. Supp. 619, 636 (D. Kan. 1968); 3B Moore, Federal Practice, ¶ 23.72, pp. 1421-1422 (1969). And if prejudgment notice is required here, the mechanics involved, such as the form the notice should take, have not been dealt with by the parties. Compare *Eisen v. Carlisle & Jacquelin*, 479 F. 2d 1005, 1015 (2d Cir. 1973), with e.g., *Lopez v. Wyman*, 329 F. Supp. 483, 486 (W.D. N.Y. 1971); *Snyder v. Board of Trustees of the University of Illinois*, 286 F. Supp. 927 (N.D. Ill. 1968).

Despite the fact that these issues have not been attended to, the plaintiffs have pressed their motion for summary judgment. Without a determination of these issues, a representative action which seeks to affect the rights of absent parties may not proceed. See *Hansberry v. Lee*, supra; *Mullane v. Central Hanover Bank & Trust Company*, 339 U.S. 306 (1950). In moving for summary judgment without having sought a formal certification of this action as a class action, the plaintiffs leave us no choice but to dismiss the class aspects of this suit, on the ground that the plaintiffs have failed to meet their burden to prove that the action meets the prerequisites of Rule 23.

Jurisdiction

Section 1343(3) of Title 18, United States Code, affords jurisdiction over plaintiffs' claims against both the state and the federal defendant. *Aguayo v. Richardson*, 473 F. 2d 1090, 1102 (2d Cir. 1973); cf. *Macias v. Finch* (324 F. Supp. 1252 (N.D. Calif. 1970); (3-Judge Court), aff'd *sub nom Macias v. Richardson*, 400 U.S. 913 (1970); *Connor v. Finch*, 314 D. Supp. 364 (N.D. Ill. 1970), (3-Judge Court), aff'd *sub nom Conner v. Richardson*, 400 U.S. 1003 (1971); but see *Stinson v. Finch*, 317 F. Supp. 581 (D. Ga. 1970), (3-Judge Court). Section 1343(3) provides original jurisdiction in the United States District Court of actions seeking redress for deprivations of constitutional rights occurring under color of state law or regulation.⁶

⁶ 28 U.S.C. § 1343(3) provides:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * * * *

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage,

The plaintiffs have been denied ANFC-UF benefits, arguably in violation of their constitutional rights, under color of Vermont Welfare Regulation 2333.1. There is plainly subject matter jurisdiction over this suit under 28 U.S.C. § 1343(3), albeit that there is no specific assertion of jurisdiction on this statute.

As defendant Betit is responsible for enforcing the state regulation in question, he is responsible in part for the denial of benefits to the plaintiffs, so there is jurisdiction over the claim against him. There is also jurisdiction over the claim against the Secretary of HEW, since his enforcement of 42 U.S.C. § 607(b)(2)(C)(ii) requires the defendant Betit to deny ANFC benefits to the plaintiffs. Thus he is partially responsible for the deprivation of which all the plaintiffs complain.⁷

of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

⁷ All that section 1343(3) requires for the exercise of jurisdiction is an alleged deprivation of Constitutional rights effected under color of state law or regulation. Given such a state action, which concededly occurred here, it is necessary to join as party defendants all persons responsible for that action. While the *Stinson* court felt that a Secretary of HEW could not properly be joined, because of his administration of a federal matching grant statute, as a party defendant to a civil rights action challenging the state statutory program receiving the matching funds, we do not agree.

First, the *Stinson* court took the view that 28 U.S.C. § 1391 (e) barred the exercise of personal jurisdiction over the Secretary by the court in the district where the claim arose, if a non-federal party were joined as a party defendant. The law in this circuit is to the contrary. *Liberation News Service v. Eastland*, 426 F. 2d 1379, 1382 n. 5 (2d Cir. 1970).

Second, it is highly unrealistic to suppose that the threat by a federal official of a denial to a state of federal ANFC-UF

The failure of the plaintiffs to plead section 1343(3) as a basis for the court's authority over the claim against the Secretary is not a serious jurisdictional defect. While it is the duty of the court to take note of any defects of jurisdiction so that the mandate of the statutes which limit jurisdiction will be observed, *Arnold v. Truccoli*, 344 F. 2d 842 (2d Cir. 1965), a statute conferring federal jurisdiction need not be specifically pleaded if facts giving the court jurisdiction are set forth in the complaint. *New York State Waterways Association, Inc. v. Diamond*, 469 F. 2d 419, 421 (2d Cir. 1971); *Eidschun v. Pierce*, 335 F. Supp. 603, 615 (D. Ia. 1971); see also *Phillips v. Rockefeller*, 321 F. Supp. 516 (S.D. N.Y. 1970), aff'd 435 F. 2d 976 (2d Cir. 1970). The motions of the defendants to dismiss for want of jurisdiction of the subject matter of this controversy must be denied.

matching funds, in retaliation for a refusal by the state to operate its ANFC-UF program in a certain way, does not make that official partially responsible for the manner in which the program is operated. The *Stinson* court's denial of this responsibility would sanction a federal statute which, arguably, authorizes the states to violate the Equal Protection Clause, contrary to the express prohibition against such Congressional action in *Shapiro v. Thompson*, 394 U.S. 618, 641 (1969).

To the extent there is any doubt about the propriety of extending 1343(3) jurisdiction over the claim against the federal defendant here, the doubt should be resolved in favor of jurisdiction, to avoid the anomaly of denial of federal jurisdiction over a suit against a federal officer challenging the constitutionality of a federal statute involving social welfare, an area in which the federal courts have particular expertise. See Friendly, **FEDERAL JURISDICTION: A GENERAL VIEW** 69-70, 121-122; Wright, **LAW OF FEDERAL COURTS** 110; *Aguayo v. Richardson*, 473 F. 2d 1090, 1102 (2d Cir. 1973).

The Statutory Scheme

Title IV (42 U.S.C. § 601 et seq.) of the Social Security Act provides for a cooperative federal-state program to assist needy families with children. States are not required to establish such programs. If they do, they must submit their plan to the Secretary for approval. Every state has established such a program.* If the plan submitted meets the requirements of 42 U.S.C. § 602(a) and contains none of the conditions prohibited in § 602(b), then the Secretary "must approve" it. Upon approval, the state becomes entitled to receive substantial federal funding for payments made in accordance with the plan and applicable federal conditions. Vermont's plan has been approved by the Secretary.

As originally established by the Social Security Act of 1935, the program for aid to dependent children did not provide for the needs of children caused by the unemployment of a parent. *King v. Smith*, 392 U.S. 309, 327-330 (1968). In 1961 the Act was amended to allow states the option of extending coverage to children who were needy because of the unemployment of a breadwinning parent. The 1961 amendment provided that a state could, if it chose to do so, deny all or any part of an AFDC stipend to a family during any month in which the supporting parent received unemployment compensation.

In 1968 the section of the act relating to AFDC-UF was amended to include the provisions challenged here. Benefits became available to a family whose need was occasioned by the unemployment of a father,

* *Dandridge v. Williams*, 397 U.S. 471, 472-473 (1970). For a general picture of AFDC as established by the Social Security Act, see *King v. Smith*, 392 U.S. 309 (1968); *Rosado v. Wyman*, 397 U.S. 397 (1970); *Dandridge v. Williams*, *supra*.

under standards prescribed by the Secretary; formerly, benefits accrued to a family whose need was caused by the unemployment of a parent, as defined by the state. The 1968 amendment also mandated denial of benefits to a family during any week in which the father received unemployment compensation. Formerly the Act allowed the state the option of enforcing a complete or partial denial of benefits, or a full stipend without reduction, for any month during which the parent received unemployment compensation.

Section 606(a), by definition of "dependent child," provides for assistance to families who are needy because of deprivation of parental support or care by reason of the death, continued absence or physical or mental incapacity of a parent. Section 607 enlarges this coverage to authorize benefits to children who are needy as a result of the unemployment of the father.

Section 607(b) makes this extended coverage applicable "to a State if the State's plan, approved under Section 602 of this title—

(2) provides—

(C) for the denial of aid to families with dependent children to any child or relation specified in subsection (a) of this section—

(i) if, and for so long as, such child's father is not currently registered with the public employment office in the State, and

(ii) with respect to any week for which the child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States."

Vermont has elected to extend its ANFC program to include those who have been deprived of parental support or care by reason of the unemployment of

the father under 42 U.S.C. § 607. In response to the requirements of that section, it has promulgated Welfare Regulation 2333.1. This regulation renders the family of an unemployed father eligible for ANFC-UF benefits if the father "is not receiving Unemployment Compensation during the same *week* as assistance is granted." (Emphasis in original text.)

This is in contrast to the treatment afforded ANFC families who receive income in a form other than unemployment compensation received by the father. The receipt of such income does not render the family ineligible for ANFC; the amount of the receipt is simply deducted from the ANFC payment which the family would normally receive.⁹

⁹ Under the Vermont plan, approved by the Secretary of HEW as consistent with the requirements of the Social Security Act, receipt of income does not render a family per se ineligible for ANFC. If the amounts received are insufficient to bring the family's income above the state-determined standard of need, those amounts are simply subtracted from the amount of the grant to which the family is entitled. Under Vermont Welfare Regulation 2601, the "Vermont ANFC payment level" is defined as the sum of the ANFC basic needs standard and shelter expense, minus "the budgeted income of the applicant and his legal dependents." "Budgeted income" is defined as "gross monthly income received from any source by the applicant and his legal dependents without income exclusions for any purpose." *Id.* "Unearned income" is explicitly defined to include "income from pension and benefit programs, such as Social Security, Railroad Retirement, veteran's pension or compensation, Unemployment Compensation, employer or individual private pension plans and/or annuities, etc." Vermont Welfare Regulation 2253.

For example, suppose a family is in need because of the father's illness and the father receives a veteran's pension. The family is not disqualified from receiving ANFC. If it is eligible for ANFC, it receives an ANFC payment equal to the

The Statutory Claim

The plaintiffs rely on the language of § 607 to assert the claim that an unemployed father can avoid disqualification from ~~ANFC-UF benefits by refusing~~ to accept unemployment compensation. In this they rightfully maintain that a family eligible for ANFC benefits under section 607 can be excluded only for each week in which unemployment compensation is actually received by the father. It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation. And in this construction the defendants concur. We find nothing in the legislative history of the enactment at variance with this construction.

Since actual payment of unemployment compensation is the controlling factor, rather than eligibility for such payment, the statute affords the unemployed father an option. There is no compulsion that he accept unemployment compensation. He may accept such payment and forego ANFC-UF benefits for himself and his family, or he may accept the benefits afforded by the ANFC-UF program at the cost of surrendering unemployment compensation. The option is to receive (a) ANFC without unemployment compensa-

state standard of need reduced by the amount of the veteran's benefit.

We use the term "state standard of need" to mean the amount of money that a family qualifying for ANFC is entitled to receive. The standard varies according to the number of persons in the group eligible for assistance, the number of persons in the household where the group resides, the place of residence of the group, and the form of housing involved, and includes funds to allow the recipient group to purchase the necessities of life: food, clothing, fuel, utilities, housing, etc. Vermont Welfare Regulation 2211.1-2211.2.

tion, or (b) unemployment compensation without ANFC. We construe this option to operate as follows: If a father otherwise eligible for ANFC-UF receives unemployment benefits which are less than the ANFC payment for which he qualifies, he can reject the unemployment check in favor of the ANFC payment, thereby receiving an income consistent with the state standard of need. If, on the other hand, he receives an unemployment check which is larger than his ANFC stipend would be, he can accept it, and thereby forego his right to ANFC for that week. In either event, the option available to him will provide total income equal to or greater than the state standard of need.

This result provides the same relief the plaintiffs seek to achieve by way of their constitutional claims. In those claims the plaintiffs seek a judicial determination that families of unemployed fathers applying for AFDC should receive the same treatment as families in need for other reasons, who qualify for AFDC under § 606. Their concern is that families of unemployed fathers, like other families applying for AFDC, should be assured of receiving an income equal to the state standard of need, irrespective of their eligibility to receive outside income. The option afforded by our construction of 42 U.S.C. § 607(b)(2)(C)(ii) provides this protection. Since our construction of this statute resolves this case, we are precluded from reaching the plaintiffs' constitutional claims. *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1936), (Brandeis, J., concurring).

It is not clear from the information before the court the extent to which the plaintiffs have been damaged financially by the failure of the Vermont Department of Social Welfare to afford them a choice between unemployment compensation and ANFC-UF. It ap-

pears from oral argument and from the stipulated facts filed by the parties that, to an extent which has not been made precisely clear, the State of Vermont supplemented the plaintiffs' unemployment compensation checks with funds from General Assistance, thereby reducing the actual loss each plaintiff suffered when his family was disqualified from ANFC-UF. If the plaintiffs are able to make a showing that they have suffered pecuniary loss as a result of this disqualification, we consider it a proper exercise of our equitable powers to afford the plaintiffs the option of re-tendering their unemployment compensation benefits and receiving ANFC benefits in lieu thereof for the relevant weeks in which the receipt of unemployment compensation has adversely affected the financial interest of the family concerned.

The parties are directed to prepare a proposed decree for approval by the court in accordance with the views expressed in this opinion.

Dated at Montpelier, in the District of Vermont, this 17th day of October, 1973.

/s/ JAMES L. OAKES, C.J.,

/s/ JAMES S. HOLDEN,

/s/ ALBERT W. COFFRIN, D.JJ.

APPENDIX B

United States District Court for the District of
Vermont

[Filed January 8, 1974]

[Title Omitted in Printing]

Supplemental Opinion and Order

Plaintiffs have filed a motion for rehearing on dismissal of the class action. Defendant Philbrook has filed a motion for a new trial.

Since the motion for a new trial presents nothing for consideration that was not presented to the court originally and is in essence a petition for rehearing, it is hereby denied.

While the motion for rehearing on dismissal of the class action may present viable matter, since the original decision of the court and motion here filed, the United States Court of Appeals for the Second Circuit has held in *Galvan v. Levine*, No. 73-1294 (2d Cir. Dec. 3, 1973), slip op. 559, 567, that where the relief sought as to the class, as here, is prohibitory only, that is, seeks only declaratory or injunctive relief, and class action designation is therefore largely a formality, what is important is that the "judgment run to the benefit not only of the named plaintiffs but of all others similarly situated" *Id.* at 569. We would assume that the State here would have understood the judgment to bind it in the future with respect to all claimants, in any event. Lest there be any mistake, however, in submitting a decree for our sig-

nature pursuant to the final paragraph of the opinion dated October 17, 1973, appropriate language to insure that the decree runs for the benefit of all others similarly situated in the future is hereby directed to be included. To the extent that plaintiffs' motion seeks to have retroactive reimbursement for unnamed parties, members of plaintiffs' class, in line with the actual relief given to the named plaintiffs and intervenors, class action designation is hereby refused, such a class action being unmanageable, notice being impracticable, and defendant being put to unwarranted inequitable administrative difficulty thereby.

Done this 28th day of December, 1973.

/s/ JAMES L. OAKES,
U.S. Circuit Judge,

/s/ JAMES S. HOLDEN,
U.S. District Judge,

/s/ ALBERT W. COFFRIN,
U.S. District Judge.

APPENDIX C

United States District Court for the District of
Vermont

[Filed February 20, 1974]

[Title Omitted in Printing]

Order of Judgment

Upon the basis of the evidence, the arguments of counsel, and the opinions of this court dated October 17, 1973 and December 28, 1973, it is ordered, adjudged and decreed that:

(1) 42 USC § 607(b)(2)(c)(ii), 45 CRF § 233.100 (a)(5)(ii) and Vermont Welfare Regulation 2331.1 excludes families in which the father is unemployed from benefits only for those weeks in which the father actually receives state unemployment compensation. The disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation, and there is no compulsion to accept UCC. If the father receives UCC benefits which are less than the ANFC payment for which he qualifies, he is afforded, under the statute, an option and can reject the UCC check in favor of the ANFC payment, thereby receiving an income consistent with the state standard of need.

(2) The Department of Social Welfare shall advise applicants who have been certified as eligible for ANFC-UF that they may elect to reject their UCC payments in favor of the ANFC payment for which they are otherwise qualified.

(3) The Secretary of HEW shall approve the Vermont ANFC-UF program in accordance with the interpretation given Section 607(b)(2)(c)(ii).

(4) This order shall bind the defendants from the date of judgment with respect to all others similarly situated as the plaintiff.

(5) Plaintiffs Glodgett, Percy and Derosia shall be given the option of retendering their unemployment compensation benefits and receiving ANFC benefits in lieu thereof, less any General Assistant paid, for the relevant weeks in which the receipt of unemployment compensation has adversely affected the financial interest of the family concerned.

Upon stipulation by the parties, if the above-mentioned named plaintiffs elect to retender their UCC and GA grants, payments, taking into account those grants, would be made as follows: \$207.17 to the Glodgetts, \$342 to the Percys, and \$21.20 to the Derosias.

DATED at Burlington in the District of Vermont, this 20th day of February, 1974.

SO ORDERED.

/s/ JAMES L. OAKES,
U.S. Circuit Judge,

/s/ JAMES S. HOLDEN,
U.S. District Judge,

/s/ ALBERT W. COFFRIN,
U.S. District Judge.

APPENDIX D

United States District Court for the
District of Vermont

[Filed April 19, 1974]

[Title Omitted in Printing]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Casper W. Weinberger, individually and as Secretary of the Department of Health, Education, and Welfare, appellant above named, hereby appeals to the Supreme Court of the United States from the final order of a Three-Judge District Court entered in this action on February 21, 1974.

This appeal is taken pursuant to 28 USC Sec. 1253
Dated: April 19, 1974.

/s/ GEORGE W. F. COOK,
United States Attorney.

Attorney for Appellant Casper W. Weinberger,
individually and as Secretary of the Department of Health, Education, and Welfare.

(20A)

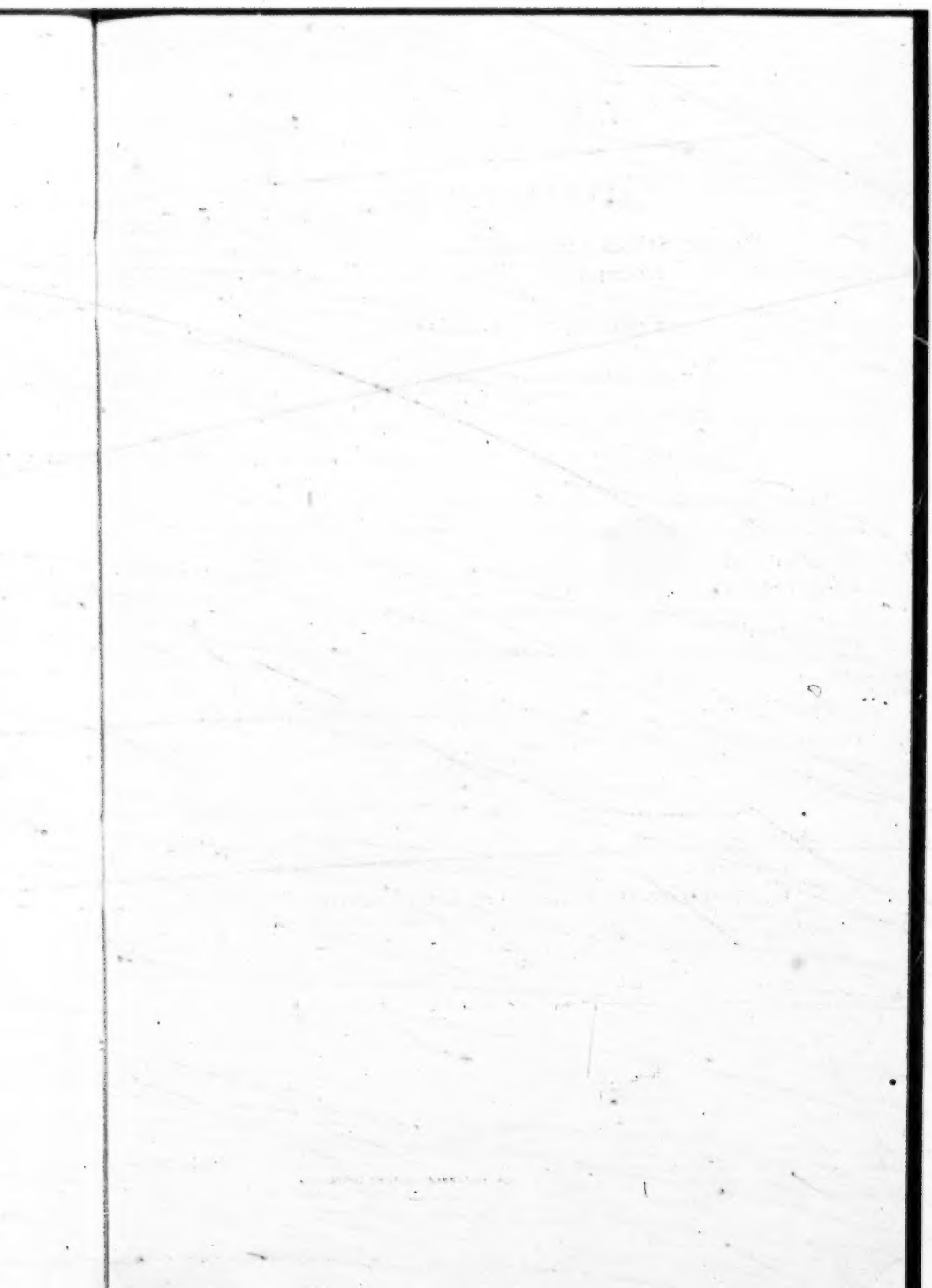


TABLE OF CONTENTS

	Page
Opinion Below	1
Jurisdiction	1
Question Presented	2
Statute and Regulation Involved	2
Statement of the Case	3
1. Introduction	3
2. District Court Proceedings	5
Summary of Argument	8
Argument	10
I. The Statutory Scheme governing the AFDC Program does not permit an unemployed father who is eligible to receive unemployment compensation to forego this entitlement in favor of more advantageous welfare benefits	10
II. The District Court's interpretation is contradictory to relevant legislative history	18
III. The District Court's interpretation evades the intended Congressional purpose of the unemployment compensation program that it be the initial resource for the unemployed and that its benefits be exhausted before an unemployed person can obtain public assistance	22
IV. The Social Security Act does not require that all needy families receive equal benefits according to the State standard of need	28
Conclusion	33

TABLE OF AUTHORITIES CITED

Cases:

Burr v. Smith, 322 F. Supp. 980 (W.D. Wash. 1971), *aff'd. mem.* 404 U.S. 1027 (1972) .. 21, 30

(II)

	Page
<i>California Department of Human Resources Development v. Java</i> , 402 U.S. 121 (1971)	23
<i>Clark v. Uebersee Finanz - Korporation, A.G.</i> , 332 U.S. 480 (1947)	11
<i>Commissioner of Internal Revenue v. Noel's Estate</i> , 380 U.S. 678 (1965)	13
<i>Crow v. California Department of Human Resources Development</i> , 490 F. 2d 580 (9th Cir. 1973)	23
<i>Dandridge v. Williams</i> , 397 U.S. 471 (1970)	28
<i>District Unemployment Compensation Board v. Wm. Hahn & Co.</i> , 399 F. 2d 987 (D.C. Cir. 1968)	23
<i>Erlenbaugh v. United States</i> , 409 U.S. 239 (1972)	11
<i>Glodgett v. Betit</i> , 368 F. Supp. 211 (D. Vt. 1973)	1, 10, 28
<i>Jefferson v. Hackney</i> , 406 U.S. 535 (1972)	28
<i>King v. Smith</i> , 392 U.S. 309 (1968)	3, 13
<i>Lewis v. Martin</i> , 397 U.S. 552 (1970)	13, 15
<i>Macias v. Finch</i> , 324 F. Supp. 1252 (W.D. Cal. 1970), <i>aff'd sub nom. Macias v. Richardson</i> , 400 U.S. 913 (1970)	29
<i>Malat v. Riddell</i> , 383 U.S. 569 (1966)	12
<i>Ozawa v. United States</i> , 260 U.S. 178 (1922)	11
<i>Parks v. Harden</i> , 354 F. Supp. 620 (N.D. Ga.) (1973)	18
<i>Perry v. Commerce Loan Co.</i> , 383 U.S. 392 (1965)	12
<i>Rosado v. Wyman</i> , 397 U.S. 397 (1970)	3
<i>Shea v. Vialpando</i> , 94 S. Ct. 1746 (1974)	3, 13, 15
<i>United States v. American Trucking Assns.</i> , 310 U.S. 534 (1940)	11
<i>United States v. Public Utilities Commission of California</i> , 345 U.S. 295 (1953)	11

(III)

	Page
<i>Von Stauffenberg v. District Unemployment Compensation Board</i> , 459 F. 2d 1128 (D.C. Cir. 1972)	23

Statutes:

28 U.S.C. §1253	1
28 U.S.C. §1331	6
28 U.S.C. §1336	6
28 U.S.C. §§1343 (3)	6, 7
28 U.S.C. §§1343 (4)	7
28 U.S.C. §1361	6
28 U.S.C. §2281	6
28 U.S.C. §2282	6
42 U.S.C. §§601-610	2, 3
42 U.S.C. §602(a)	3
42 U.S.C. §602(a) (7)	8, 12, 13, 16
42 U.S.C. §606(a)	3
42 U.S.C. §607	2, 29
42 U.S.C. §607(a)	4
42 U.S.C. §607(b) (1) (C) (i)	17, 18
42 U.S.C. §607(b) (2) (C) (ii)	2, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21
42 U.S.C. §1983	6
Social Security Act of 1935:	
§402(a) (7), 53 Stat 1379	12
§407(b) (2) (C) (ii), 82 Stat 273	2
21 V.S.A. §1301 <i>et seq.</i>	27
21 V.S.A. §§1324-1327	27
Act of May 8, 1961, Pub. L. 87-31, §1, 75 Stat. 75	12
Act of July 25, 1962, Pub. L. 87-543, Title I, §131(a), 76 Stat. 193	13
Act of June 29, 1967, Pub. L. 90-36, §2, 81 Stat. 94	13
Act of January 2, 1968, Pub. L. 90-248, Title II, §203(a), 81 Stat. 882	13

(IV)

	Page
Act of June 28, 1968, Pub. L. 90-364, Title III, §302, 82 Stat. 273	13
Regulations:	
45 C.F.R. §233.20(a) (1)	16
45 C.F.R. §233.20(a) (3) (ii) (C)	15
45 C.F.R. §233.20(a) (3) (ix)	15
45 C.F.R. §233.100(a) (5) (ii)	5
§2333.1 of the Vermont Welfare Assistance Manual	2, 3, 5, 6
§2270 of the Vermont Welfare Assistance Manual	15
Miscellaneous:	
M. Barth, G. Carcagno, and J. Palmer, <i>Toward an Effective Income Support System: Problems, Prospects, Choices</i> , (1974)	3
<i>Charity versus Social Insurance in Unemployment Compensation Laws</i> , 73 Yale L.J. 357 (1963)	26
<i>Handbook of Public Assistance Administration</i>	13
Part IV §§3120	14
§§3140(4)	14
§§3140(6)	14
H.R. Rep. No. 544, 90th Cong., 1st Sess. (1967) ..	20
H.R. Rep. No. 1030, 90th Cong., 1st Sess. (1967) ..	19
<i>Public Assistance Statistics April 1974</i> , DHEW Publication No. (SRS) 75-03100, NCSS Re- port A-2, (4/74)	4, 5
S. Rep. No. 628, 74th Cong., 1st Sess. (1935)	25, 26

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1820

**PAUL R. PHILBROOK,
APPELLANT**

v.

**JEAN GLODGETT, ET AL.,
APPELLEES**

**ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF VERMONT**

BRIEF FOR THE APPELLANT

OPINION BELOW

The opinion and supplemental opinion and order of the United States District Court are reported at 368 F. Supp. 211 (1973). The Court's order of judgment, which is not reported, is set out in appellant Philbrook's Jurisdictional Statement (J.S.) at 41-43.

JURISDICTION

The judgment of the three-judge District Court was entered on February 21, 1974. A notice of appeal to this Court was filed on April 9, 1974. (J.S. at 45-46) The Jurisdictional Statement was filed on June 3, 1974, and probable jurisdiction was noted on October 29, 1974. The jurisdiction of this Court rests on 28 U.S.C. §1253.

QUESTION PRESENTED

Was the District Court correct in deciding that 42 U.S.C. §607(b)(2)(C)(ii)¹ and §2333.1(3) of the Vermont Welfare Assistance Manual exclude families from Aid to Needy Families with Children² benefits for only those weeks in which an otherwise eligible father actually receives unemployment compensation, and thereby provide the father with the option of rejecting unemployment compensation for which he is qualified in favor of more advantageous ANFC benefits?

STATUTE AND REGULATION INVOLVED

42 U.S.C. §607(b)(2)(C)(ii) reads as follows:

(b) The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title . . .

(2) provides . . .

(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section . . .

(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

Section 2333.1(3) of the Vermont Welfare Assistance Manual reads as follows:

¹ Section 407(b)(2)(C)(ii) of the Social Security Act of 1935, as amended, 82 Stat. 273. Since the District Court used the United States Code citation, the appellant will use this citation throughout as well.

² Vermont has chosen to refer to its program under Title IV-A of the Social Security Act (42 U.S.C. §601 *et seq.*) as "Aid to Needy Families with Children" rather than "Aid to Families with Dependent Children" as it is referred to in the Act itself and elsewhere. The Vermont program shall be referred to hereinafter as "ANFC." When reference is to the Unemployed Father provisions, the program shall be referred to as "ANFC-UF".

An "unemployed father" is one whose minor children are in need because he is out of work, is working part-time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that . . .

(3) He is not receiving Unemployment Compensation during the same *week* as assistance is granted. [emphasis in original text]

The full texts of 42 U.S.C. §607 and §2333.1 of the Manual are set out in appellant Philbrook's Jurisdictional Statement at 47-50 and 51-52, respectively.

STATEMENT OF THE CASE

1. Introduction

This case arises under Title IV-A of the Social Security Act of 1935, as amended, (42 U.S.C. §§601-610), which establishes the federal-state Aid to Families with Dependent Children (AFDC) program.³ The Social Security Act provides for substantial federal payments to states for the funding of state assistance programs on behalf of families with a dependent child or children. In order to be eligible for federal payments, however, there must be a "state plan" under 42 U.S.C. §602(a) which meets all of the relevant requirements of the statute and its implementing regulations.

For purposes of the AFDC program, a "dependent child" is defined in 42 U.S.C. §606(a) to mean, in part, a needy child who is deprived of parental support or care because of the death, continued absence from the home, or physical or mental incapacity of a parent.⁴

³ See generally *King v. Smith*, 392 U.S. 309, 313, 316-17 (1968); *Rosado v. Wyman*, 397 U.S. 397, 407-09 (1970); *Sbes v. Vialpando*, 94 S.Ct. 1746, 1750 (1974). See also M. Barth, G. Carcagno and J. Palmer, *Toward an Effective Income Support System: Problems, Prospects, and Choices* 15-19 (1974).

⁴ 42 U.S.C. §606(a) reads as follows:

The term "dependent child" means a needy child (1) who has been

In addition, states are given the option under 42 U.S.C. §607(a)⁸ to expand the definition of "dependent child" to include a needy child who has been deprived of parental support because of his father's unemployment.⁹ If a state plan provides for payments to families whose child is dependent because of the father's unemployment, the state must, among other things, meet the requirements of 42 U.S.C. §607(b)(2)(C)(ii).

That section requires that a state plan provide for the denial of assistance to such families with respect to any week for which the child's father receives unemployment compensation under a state or federal unemployment compensation law. This provision is implemented by a regulation promul-

deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment; . . .

⁸ 42 U.S.C. §607(a) reads as follows:

The term "dependent child" shall, notwithstanding section 606(a) of this title, include a needy child who meets the requirements of section 606(a)(2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 606(a)(1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

⁹ As of April, 1974, the Unemployed Father provisions were in effect in 26 states. See *Public Assistance Statistics April 1974*, DHEW Publication No. (SRS) 75-03100, NCSS Report A-2 (4/74), Table 5.

gated by the United States Department of Health, Education and Welfare, set forth at 45 C.F.R. §233.100 (a) (5) (ii).⁷

The State of Vermont participates in the Unemployed Father segment⁸ of the AFDC program under an approved state plan. In order to comply with the above-mentioned requirements, the Vermont Department of Social Welfare has promulgated §2333.1(3) of the Welfare Assistance Manual, which parallels 42 U.S.C. §607(b)(2)(C)(ii) and provides for the denial of ANFC-UF benefits for any week during which the unemployed father receives unemployment compensation.

2. District Court Proceedings

Appellees (plaintiffs below) are members (parents and minor children) of three Vermont families. Two of the families were terminated from the receipt of ANFC-UF benefits once the father began to receive weekly unemployment compensation. The third family's application for

⁷ 45 C.F.R. §233.100 (a) (5) (ii) reads as follows:

(a) Requirements for State Plans. If a state wishes to provide AFDC for children of unemployed fathers, the state plan under Title IV — Part A of the Social Security Act must, except as specified in paragraph (b) of this section . . . (5) Provide for the denial of such aid to any such dependent child or the relative specified in section 406 (a) (1) of the Act [42 U.S.C. §606 (a) (1)] with whom such child is living, . . . (ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

⁸ The Unemployed Father segment is significant, both in Vermont and nationwide. In April 1974, for example, 862 families in Vermont were participating. The average amount of payment per family was \$334.33, or \$71.26 per recipient. The total amount expended in Vermont for the month was \$288,191. Nationwide, 99,911 families received benefits under the UF segment during April, 1974. The average payment per family was \$287.55, or \$63.09 per recipient. The total monthly expenditure was \$28,729,652. *Public Assistance Statistics April 1974, supra.*

ANFC-UF was denied because the father, at the time of application, was receiving unemployment compensation. In each case the amount of weekly unemployment compensation was less than the amount the family had been receiving or would have received under ANFC-UF.⁹

Suit was brought on March 6, 1972, in United States District Court for the District of Vermont seeking declaratory and injunctive relief and damages. The action against the Vermont Commissioner of Social Welfare was brought pursuant to the provisions of 42 U.S.C. §1983. The suit challenged the constitutionality of 42 U.S.C. §607(b)(2)(C)(ii) and §2333.1(3) of the Vermont Welfare Assistance Manual, alleging that the statute and regulation violated respectively the Due Process Clause of the Fifth Amendment and Due Process and Equal Protection Clauses of the Fourteenth Amendment. The plaintiffs below alleged that the court had jurisdiction over the Commissioner under 28 U.S.C. §§ 1343(3) and (4) and 28 U.S.C. §1331, and over the federal defendant under 28 U.S.C. §1361 and 28 U.S.C. §1336. A three-judge Court was convened under 28 U.S.C. §§2281-2282.

At the oral argument held on March 5, 1973, plaintiffs raised for the first time a statutory claim. They suggested that the families could avoid disqualification under §607(b)(2)(C)(ii) and §2333.1(3) if the father refused to accept the unemployment compensation to which he was entitled. It was argued that the statutory and regulatory provisions exclude a family from eligibility only for those weeks in which the unemployed father actually receives

	ANFC (Monthly)	Unemployment Compensation (Monthly)
Glodgett	\$239	\$ 60
Percy	410	172
Derosia	394	56

unemployment compensation. (Transcript of Oral Argument, March 5, 1973 at 42-44)

The three-judge Court determined that jurisdiction existed over both defendants under 28 U.S.C. §1343(3), but decided the case on the basis of the statutory claim, thereby avoiding a decision on the constitutional issues.

In its opinion of October 17, 1973, the Court found that actual receipt of and not eligibility for unemployment compensation was controlling for ANFC-UF eligibility. From this determination, the Court concluded that an individual otherwise eligible for both programs could take his choice.¹⁰

The final order, issued February 21, 1974, enjoined the Commissioner from denying ANFC-UF to any individual eligible for unemployment compensation in that it prohibited him from compelling any individual to avail himself of unemployment compensation benefits and required him to advise applicants of this option. Even though the case was not certified as a class action, the order bound the appellant with respect to all others similarly situated. (J.S. at 41-43)

Appellant's stay of execution of the judgment was granted on March 1, 1974. (Appendix at 103)

¹⁰ On January 8, 1974, the Court issued a supplemental opinion and order which, among other things, denied the appellant's motion for a new trial and appellees' motion for a rehearing with respect to the Court's denial of class action certification.

SUMMARY OF ARGUMENT

I

The District Court's option plan, whereby an unemployed father may reject the unemployment compensation to which he is entitled in order to receive more advantageous benefits under the AFDC-UF program, is contrary to the AFDC statutory scheme.

Under 42 U.S.C. §602(a) (7), the states must take into consideration "any other income and resources" of an applicant for AFDC benefits. This provision has long been understood to require consideration of any income and resources for which an applicant is qualified, as well as any actually in hand.

Thus, contrary to the District Court's conclusion, the actual receipt of unemployment compensation is not controlling for purposes of AFDC eligibility. Rather, because of the effect of §602(a) (7), if an unemployed father is qualified for such compensation, he is ineligible for AFDC benefits under 42 U.S.C. §607(b) (2) (C) (ii) whether he actually receives it or not.

II

The legislative history of 42 U.S.C. §607(b) (2) (C) (ii) fully supports the appellant's position that an applicant is ineligible for AFDC benefits if he is qualified to receive unemployment compensation. The Conference Committee report on the 1968 amendments to the Social Security Act demonstrates beyond peradventure that Congress intended the word "receives" in §607(b) (2) (C) (ii) to encompass the qualification for receipt of unemployment compensation as well as actual receipt.

Congress, at that time, was attempting to modify the AFDC program so as to reduce the welfare population, and

any other interpretation of §607(b)(2)(C)(ii) would be inconsistent with both the clear statements of the Committee and the overall legislative objective.

III

The District Court's option plan, which would encourage many unemployed fathers to forego their unemployment compensation in favor of AFDC benefits, is totally inconsistent with the purposes of the unemployment compensation program.

That program was designed by Congress to provide assistance as a matter of right to wage earners temporarily out of work so that they would not have to resort to welfare. The unemployment compensation program is an alternative to public assistance, and the benefits thereunder must be exhausted before public assistance will be made available.

Moreover, the District Court's plan would have the effect of benefitting, at the expense of the taxpayer, those employers who are required to contribute to the unemployment compensation trust fund. In those cases where an unemployed father opts for welfare, the unemployment compensation trust fund would remain intact. Yet, there is no suggestion that Congress intended such a result.

IV

Underlying the District Court's option plan seems to be the belief that the Social Security Act requires that all needy families receive benefits which are at least the equivalent of the state standard of need as established under the AFDC program. But, as this court has recognized on several occasions, there is no such requirement under the Act. The Act is not violated if a family receives less benefits from the father's unemployment compensation program than it would under the AFDC program.

ARGUMENT

I. The statutory scheme governing the AFDC program does not permit an unemployed father who is eligible to receive unemployment compensation to forego this entitlement in favor of more advantageous welfare benefits.

In construing 42 U.S.C. §607(b) (2) (C) (ii), the District Court found that "It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation." 368 F. Supp. at 217. With this as a starting point, the court reasoned as follows:

Since actual payment of unemployment compensation is the controlling factor, rather than eligibility for such payment, the statute affords the unemployed father an option. There is no compulsion that he accept unemployment compensation. He may accept such payment and forego ANFC-UF benefits for himself and his family, or he may accept the benefits afforded by the ANFC-UF program at the cost of surrendering unemployment compensation. The option is to receive (a) ANFC without unemployment compensation, or (b) unemployment compensation without ANFC. We construe this option to operate as follows: If a father otherwise eligible for ANFC-UF receives unemployment benefits which are less than the ANFC payment for which he qualifies, he can reject the unemployment check in favor of the ANFC payment, thereby receiving an income consistent with the state standard of need. If, on the other hand, he receives an unemployment check which is larger than his ANFC stipend would be, he can accept it, and thereby forego his right to ANFC for that week. In either event, the option available to him will provide total income equal to or greater than the state standard of need. *Id.* at 217-218.

This approach is totally improper, however, because it rests upon an erroneous premise. The disqualifying factor is not

actual payment; rather mere qualification for unemployment compensation¹¹ by itself precludes participation in the ANFC-UF program.

The District Court's error in construction¹² resulted, in part, from the fact that it failed to consider the inter-relationship between §607(b)(2)(C)(ii) and other relevant sections of Title IV-A of the Social Security Act, their implementing regulations, and administrative history. The Court's analysis was limited simply to the very language of §607(b)(2)(C)(ii) itself, and that language was interpreted literally. Clearly, however, individual sections of a single statute should be construed together, *Clark v. Uebersee Finanz-Korporation, A. G.*, 332 U.S. 480, 488 (1947); *Erlenbaugh v. United States*, 409 U.S. 239, 244 (1972), especially when, as will be demonstrated below, a literal reading produces an unreasonable result clearly contrary to the intent of the legislation as a whole. See *Ozawa v. United States*, 260 U.S. 178, 194 (1922); *United States v. American Trucking Assns.*, 310 U.S. 534, 543, (1940); *United States v. Public Utilities Commission of California*, 345 U.S. 295,

¹¹ Repeated use of the term "qualification for receipt" or similar terms is made throughout. It is intended that an unemployed father is qualified to receive unemployment compensation if he would have been eligible to receive it upon filing an appropriate application.

¹² The Court incorrectly states that the "defendants concur" in its construction. 368 F.Supp. at 217. Defendant Philbrook, the appellant here, submitted a memorandum to the District Court in which he specifically opposed this construction of the statute (Defendant Philbrook's Memorandum of Law, April 10, 1973). It is true though, that in a memorandum submitted to the District Court by Defendant Weinberger, he initially took the position that the Court adopted. (Federal Defendant's Memorandum of Law, August 16, 1972, p. 7, n. 2). This was at a time when the construction of the statute was not in issue, however, and his position has since been clarified (Federal Defendant's Memorandum of Law, March 27, 1973, p. 6).

315 (1953); *Perry v. Commerce Loan Co.*, 383 U.S. 392, 400 (1965); *Malat v. Riddell*, 383 U.S. 569, 571-72 (1966).

By reading §607(b)(2)(C)(ii) in conjunction with 42 U.S.C. §602(a)(7)¹³ the intended scope of the former becomes clear; it becomes evident that the word "receives" is intended to include both actual receipt and qualification for receipt.

Section 602(a)(7), a provision applicable to the entire AFDC program, reads as follows:

A State plan for aid and services to needy families with children must . . . (7) except as may be otherwise provided in clause (8), provide that *the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same house as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income.* (emphasis added)

In 1968,¹⁴ the year Congress first required states which

¹³ Section 402(a)(7) of the Social Security Act of 1935, as amended, 53 Stat. 1379.

¹⁴ Prior to 1961, the definition of "dependent child" did not include a child who was dependent because of parental unemployment. In 1961, Congress expanded the definition temporarily (effective May 1, 1961 to June 30, 1962) to include ". . . a needy child under the age of eighteen who has been deprived of parental support or care by reason of the unemployment (as defined by the State) of a parent . . ." The amendment to the Act also gave the States the option to "provide for the denial of all (or any part) of the aid under the plan to which any child or relative might otherwise be entitled for any month, if the unemployed parent of such child receives unemployment compensation under an unemployment compensation law of a State or of the United States for any week any part of which is included in such month." Act of May 8, 1961, Pub. L. 87-31, §1, 75 Stat. 75.

participated in the Unemployed Father program to deny all AFDC benefits to families in which the father receives unemployment compensation, the mandate of §602(a)(7) was implemented in the rules¹⁵ promulgated by the U.S. Department of Health, Education, and Welfare (HEW) in its *Handbook of Public Assistance Administration* ("Handbook"). These rules obviously reflected the agency's interpretation of §602(a)(7). This being the case, it must be presumed that Congress was aware of, and accepted, this interpretation when it passed §607(b)(2)(C)(ii). Cf. *Commissioner of Internal Revenue v. Noel's Estate*, 380 U.S. 678, 682 (1965).

With respect to developing potential income and resources for recipients under Titles I, IV, X, XIV, and XVI of the Social Security Act, the *Handbook* provided as follows:

These provisions were extended for five years in 1962. Act of July 25, 1962, Pub. L. 87-543, Title I, §131(a), 76 Stat. 193.

In 1967, Congress extended the termination date from June 30, 1967 to June 30, 1968. Act of June 29, 1967, Pub. L. 90-36, §2, 81 Stat. 94.

In 1968, the provisions were amended twice. The first change, among other things, eliminated the authority for states to apply their own definition of unemployment and gave that authority to the Secretary; limited the applicability of the expanded definition of dependent child to those deprived of parental support or care by reason of the father's unemployment; required in a new section 407(b)(2)(C)(ii) (42 U.S.C. §607(b)(2)(C)(ii)) the denial of assistance . . . "if, and for as long as, such child's father . . . receives unemployment compensation under an unemployment compensation law of a State or of the United States;" made the Unemployed Fathers program permanent. Act of January 2, 1968, Pub. L. 90-248, Title II, §203(a), 81 Stat. 882.

The second change in 1968 amended §407(b)(2)(C)(ii) to read as it does at present. Act of June 28, 1968, Pub. L. 90-364, Title III, §302, 82 Stat. 273.

¹⁵ These rules have been viewed as authoritative in several cases, including *Shea v. Vialpando*, *supra*; *Lewis v. Martin*, 397 U.S. 552 (1970); and *King v. Smith*, *supra*.

The State has the responsibility for establishing policies with reference to potential sources of income that can be developed to a state of availability. *Handbook*, Part IV, §3120.

In explaining this policy, the *Handbook* dealt with the question of whether, under the above-mentioned Titles, the wife of a beneficiary under Old Age, Survivors and Disability Insurance (OASDI) benefits, or a woman with a wage record, must apply for reduced OASDI benefits if she were between age 62 and 65 or whether she could wait until age 65 and receive full benefits. The *Handbook* stated that the woman had an option, but went on to say:

The Federal Act, however, does not give any individual a right to have his needs met out of an assistance program because of his refusal to accept any resource that is available to him upon application. *Handbook*, Part IV, §3140(4).

The *Handbook* also outlined the appropriate treatment of "Other Statutory Benefits." It stated:

In addition to OASDI, other statutory benefits to which applicants and recipients for public assistance may qualify include *unemployment insurance*, temporary disability insurance, railroad retirement benefits, civil service retirement benefits, other government retirement benefits (Federal, State, county and local) and veterans benefits. *It is important that the state's policies and procedures for determining eligibility on the basis of need include clear instructions to staff for identifying cases in which such statutory benefits might be a resource, and, with respect to such cases, the process of determining the availability of such resources.* *Handbook*, Part IV, §3140(6). (emphasis added)

With this administrative interpretation in mind, it is reasonable to conclude that Congress meant the word "receives" in §607(b)(2)(C)(ii) to carry forward the existing policy

which required an AFDC applicant to avail himself of any income or resource that he could obtain upon application.

These *Handbook* provisions have now been superseded by HEW regulations which impose the same requirements. And since HEW is the federal agency charged with the administration of the Social Security Act, deference must be given to its interpretations. *Lewis v. Martin, supra* at 559. These regulations require that "... only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered..." 45 C.F.R. §233.20(a)(3)(ii)(c), and that the state plan must "[P]rovide that the agency will establish and carry out policies with reference to applicants' and recipients' *potential sources of income that can be developed to a state of availability.*" 45 C.F.R. §233.20(a)(3)(ix). (emphasis added)

In Vermont, the long-standing policy is implemented in §2270 of the Welfare Assistance Manual which states:

All *potential* sources of income and/or resources to meet current or future needs of applicants(s)/recipient(s) shall be explored, identified, and if feasible, developed. The applicant/recipient shall be encouraged to take the initiative, when able, to secure such income and/or resources for himself, with the assistance, if needed, of department staff. Practical and feasible steps in identifying and developing potential income and/or resources include, but are not limited to the following...

2. *Filing applications for benefits to which the individual may be entitled.* (emphasis added)

Thus, qualification for unemployment compensation has long been considered to fall within the category of "any other income and resources" under §602(a)(7), and this Court has seemingly adopted such an interpretation.

In the recent case of *Shea v. Vialpando, supra*, this Court had occasion to interpret the last clause of §602(a)(7),

which requires the States to take into consideration "any" expenses incurred in earning income. Mr. Justice Powell said:

By its terms, [§602(a)(7)] requires the consideration of "any" reasonable work expenses in determining eligibility for AFDC assistance. In light of the evolution of the statute and the normal meaning of the term "any," we read this language as a congressional directive that *no limitation*, apart from that of reasonableness, may be placed upon earning of income. 935 ct. at 1973. (emphasis added)

The word "any" also modifies "other income and resources," which is the clause of §602(a)(7) relied upon here. By applying the same meaning of the word "any" in this context, there should be "no limitation" on the income and resources that must be taken into consideration. "Congress has been careful to ensure that *all* of the income and resources properly attributable to a particular applicant be taken into account, and this individualized approach has been reflected in the implementing regulations." *Id.* at 1954. (emphasis in original)

It should be pointed out that the effect of §607(b)(2)(C)(ii) when read in conjunction with §602(a)(7) is to work a complete disqualification for AFDC benefits. Since §602(a)(7) compels an individual to explore and take advantage of all potential resources, by doing so with respect to unemployment compensation that individual would be prohibited from receiving AFDC under §607(b)(2)(C)(ii). Thus, the availability of unemployment compensation occasions a significantly different result from the availability of other income or resources under §602(a)(7). That there may be different treatment, however, is recognized in 45 C.F.R. §233.20(a)(1) which states that a state plan for AFDC must provide that all types of income will be treated the same "except where otherwise specifically authorized by

Federal statute." (The rationale for treating unemployment compensation differently is discussed below in III.)

Despite all the above, the appellees take the position that the word "receives" does not encompass eligibility for receipt. As support for this position, they refer to the fact §607(b)(1)(C)(i) uses the words "qualified . . . for unemployment compensation," and that since these words are used in one subsection of §607(b), their absence in §607(b)(2)(C)(ii) means that the word "receives" is limited to actual receipt. As stated in appellees' Motion to Affirm at 7, the omission of these words in §607(b)(2)(C)(ii) indicates "that Congress was capable of making a distinction between 'receipt' of unemployment compensation and 'eligibility' for benefits . . ."

Section §607(b)(1)(C)(i), in setting forth as eligibility standards the necessary degree of prior attachment to the labor force, provides that:

(b) The provisions of subsection (a) of this section [the expanded definition of "dependent child"] shall be applicable to a State if the State's plan approved under section 602 of this title —

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) of this section when —

* * *

(C)(i) such father has 6 or more quarters of work (as defined in subsection (d)(1) of this section) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under an unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d)(3) of this Section) for unemployment compensation under the unemployment compensation law of the

State, within one year prior to the application for such aid; . . .

The distinction is not significant for present purposes, however, because §607(b)(1)(C)(i) and §607(b)(2)(C)(ii) deal with completely different concepts. In the former, Congress was concerned only with limiting AFDC-UF payments to those individuals who had a prior attachment to the labor force. This prior attachment could be described in part by direct reference to eligibility for unemployment compensation.

On the other hand, §607(b)(2)(C)(ii) deals with the question of receipt of AFDC and unemployment compensation in the same eligibility period. In this respect, there is no reason to examine the prior work history of the applicant and hence no need in this section to speak in terms of qualification to receive unemployment compensation, as distinguished from actual receipt, especially in view of the section's traditional interpretation.

II. The District Court's interpretation is contradictory to relevant legislative history.

Just as it is necessary to view §607(b)(2)(C)(ii) as part of an integral scheme, it is likewise necessary to "undertake the Herculean task of seeking to ascertain Congressional intent through legislative history. This is especially difficult in the welfare area." *Parks v. Harden*, 354 F. Supp. 620, 674 (N. D. Ga. 1973). While the instant case is no exception, the existing legislative history supports the appellant's position.

The most important excerpt from the legislative history can be found in the Conference Committee's report of the January, 1968, amendments to the Social Security Act. In the House version of those amendments (the version which was ultimately enacted), states were required to deny

assistance "if, and for so long as [the unemployed father] . . . receives unemployment compensation under an unemployment compensation law of a state or of the United States." The amendment passed by the Senate, however, retained the option provision then in effect, which permitted states to deny any or all AFDC benefits if unemployment compensation were received.¹⁰ The Conference Committee's report explained both versions as follows:

"Unemployed Fathers under AFDC"

Amendments Nos. 186, 189, 190, 191, 193 and 195; Section 407 of the Social Security Act, as amended by Section 203(a) of the House bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to *exclude* fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid, *and fathers who receive (or are qualified to receive) any unemployment compensation under state law.* [emphasis added]

The Senate amendments removed these exclusions and restored the provisions of the present law under which a state may at its option wholly or partly deny AFDC for any month where the father receives unemployment compensation during the month. (The Senate amendments also removed certain work or training requirements in order to conform with amendment No. 198, and modified the effective date provisions of the House bill). The Senate recedes (except on the conforming amendments and effective date provisions). H. R. Rep. No. 1030, 90th Cong., 1st Sess. 57 (1967) [emphasis added].

Thus, it is apparent that the Conference Committee understood the House version to "exclude" from AFDC eligibility those fathers who "receive" unemployment compensation as well as those who are "qualified to receive" unem-

¹⁰ See n. 14, *supra* at 10.

ployment compensation. In addition, the fact that the words "or are qualified to receive" are enclosed within parentheses suggests that the Conference Committee realized that the word "receives" included both the actual receipt and the qualification for such receipt.

That this is the correct interpretation becomes even clearer when viewed in terms of what Congress was endeavoring to accomplish through enacting the 1968 amendments to the AFDC program. The report of the House Committee on Ways and Means¹⁷ discussed the problem and the proposed solutions as follows:

AID TO FAMILIES WITH DEPENDENT CHILDREN

* * *

Third, the bill would make reforms in the aid to families with dependent children programs:

(1) To give greater emphasis in getting appropriate members of families drawing aid to families with dependent children (AFDC) payments into employment *and thus no longer dependent on the Welfare rolls*, the bill would require the States.

* * *

(d) To modify the optional unemployed parents program to provide uniform eligibility requirements throughout the United States. (emphasis added).

The report, at 96-97, continued as follows:

Your committee has studied these problems very carefully and is now recommending several coordinated steps which it expects, over time, will reverse the trend toward higher and higher Federal financial commitments in the AFDC program. The overall plan which the committee has developed, with the advice and help of the Department of Health, Education, and Welfare, amounts to a new direction for AFDC legislation. The committee is recommending the enactment of a series of

¹⁷ H. R. Rep. No. 544, 90th Cong. 1st Sess. 2 (1967).

amendments to carry out its *firm intent of reducing the AFDC rolls* by restoring more families to employment and self-reliance, thus reducing the Federal financial involvement in the program. These changes are —

(6) A more definitive program of aid to the children of the unemployed. (emphasis added)

It is quite evident from the above that Congress was vitally concerned with reducing the number of welfare recipients. While the above-quoted excerpts from the Committee Report do not refer specifically to the proposed §607 (b) (2) (C) (ii), that section was one component of the overall plan to accomplish the objective. With this in mind, it would be strange indeed to say that Congress at the very same time and through the effect of the very same provision intended to permit unemployed fathers to reject their entitlement and join the welfare rolls.

The only case interpreting the requirements of §607 (b) (2) (C) (ii) of which the appellant is aware is *Burr v. Smith*, 322 F. Supp. 980 (W. D. Wash. 1971), *aff'd. mem.* 404 U.S. 1027 (1972), and the interpretation is fully consistent with the above-described legislative history. The Court in that case rejected a constitutional challenge to a state statute and regulation which denied AFDC benefits to families in which the father was eligible for unemployment compensation.

In its effect, the regulation was identical to Vermont's: "Under the regulation's terms, children otherwise eligible for AFDC-[UF] assistance are disqualified from receiving benefits during any week in which the fathers receive or are eligible to receive unemployment compensation" *Id.* at 983-984.

The court left no doubt that it understood the regulation to be consistent with the mandate of §607 (b) (2) (C) (ii): "Except for this eligibility, plaintiffs would have been en-

titled to receive joint federal-state Aid to Families with Dependent Children (AFDC) benefits designed to assist the families of persons temporarily unemployed (AFDC-[UF]). 42 U.S.C. §607." *Id.* at 981. The court also stated that the regulation "was promulgated in direct response to the federal provision." *Id.* at 983. And at 984: "The purpose of the regulation is to protect the State's eligibility to participate in the federal matching grant program for unemployed fathers. Without the regulation, the State's AFDC-[UF] plan would not meet federal requirements. 42 U.S.C. §607(b); 45 C.F.R. §233.100."

III. The District Court's interpretation evades the intended Congressional purpose of the unemployment compensation program that it be the initial resource for the unemployed and that its benefits be exhausted before an unemployed person can obtain public assistance.

As indicated, the court has fashioned a scheme under which an unemployed father will be encouraged in many cases to enlist his family on the welfare rolls rather than receive unemployment compensation. Yet, this result is entirely contradictory to the clearly stated purpose of the unemployment compensation program. As explained below, that program was expressly designed to keep families off welfare.

The federal statute creating the unemployment compensation program was passed as part of the Social Security Act of 1935, the same Act that created the predecessor of the AFDC program. The country was then suffering from an economic depression, and Congress was attempting to mold new programs to overcome the severe problems.

Unemployment compensation and aid to dependent children represented two separate and distinct approaches, each designed to benefit a different segment of the population

then suffering from economic insecurity. The former was a significant departure from previous ways of dealing with such insecurity; it was based on the principle of insurance, and created a right to compensation during periods of unemployment. The latter was conceived as a program of last resort, one intended to benefit a category of individuals (children) not otherwise protected.

The most thorough discussion by this Court of the purposes of the unemployment compensation program is found in *California Department of Human Resources Development v. Java*, 402 U.S. 121 (1971).¹⁸ In that case, the Chief Justice dealt at length with the intended scope of the program as reflected in its legislative history.

He stated at 130-131:

The Social Security Act received its impetus from the Report of the Committee on Economic Security, which was established by executive order of President Franklin D. Roosevelt to study the whole problem of financial insecurity due to unemployment, old age, disability, and health. In its report, transmitted to Congress by the President on January 17, 1935, the Committee recommended a program of unemployment insurance compensation as a "first line of defense for * * * [a worker] ordinarily steadily employed * * * for a limited period during which there is expectation that he will soon be reemployed. This should be a *contractual right* not dependent on any means test. * * * It will carry workers over most, if not all, periods of unemployment in normal times *without resort to*

¹⁸ Such purposes have also been discussed in several lower court decisions, including *Crow v. California Department of Human Resources Development*, 490 F.2d 580, 586 (Duniway, J. concurring and dissenting) (9th Cir. 1973); *Von Stauffenberg v. District Unemployment Compensation Board*, 459 F.2d 1128, 1131 (D. C. Cir. 1972); and *District Unemployment Compensation Board v. Wm. Hahn & Co.*, 399 F.2d 987, 990 (D. C. Cir. 1968).

any other form of assistance." (footnotes omitted)
(emphasis added)

And at 133:

The purpose of the Act was to give prompt if only partial replacement of wages to the unemployed, to enable workers "to tide themselves over, until they get back to their old work or find other employment, *without having to resort to relief.*" Unemployment benefits provide cash to a newly unemployed worker "at a time when otherwise he would have nothing to spend," serving to maintain the recipient at subsistence levels *without the necessity of his turning to welfare or private charity.* Further, providing for "security during the period following unemployment" was thought to be a means of assisting a worker to find substantially equivalent employment. (footnotes omitted) (emphasis added)

Continuing at 131-132:

Paying compensation to an unemployed worker promptly after an initial determination of eligibility accomplishes the congressional purposes of *avoiding resort to welfare* and stabilizing consumer demands. . . . (emphasis added)

Thus, unemployment compensation and welfare were considered mutually exclusive. The whole import of the former was to meet the needs of the unemployed during temporary periods when jobs were unavailable so that workers would not have to turn to welfare to support themselves and their families. Since by definition the recipient of unemployment compensation would have a prior attachment to the labor market, it was presumed that he would be able to resume work before his compensation was exhausted. If work was not forthcoming, and the recipient exhausted his compensation benefits and all other available resources, then, but only then, could he turn to other means of assistance.

Such compensation is not a complete safeguard

against the hazard of unemployment. In periods of prolonged depression many workmen will exhaust their compensation benefits before they find other employment. This will hold true of some workmen even in periods of prosperity. Supplemental to unemployment compensation there will still be need for work relief for those whose compensation rights have been exhausted, as well as for workers who are outside of the compensation system. S. Rep. No. 628, 74th Cong. 1st Sess. 11 (1935)

The concept of unemployment compensation as a right

... represented a radical departure from traditional methods of dealing with economic insecurity. The social insurance principle which the act embodied was new to the American public and to American law. Traditional community response to the needs of the employed had taken the form of charity — public and private. The Depression had made it clear to most people that this response was seriously deficient in two respects. Economically, the community lacked the fiscal organization and resources to meet the exigencies of mass unemployment on a charitable basis; and relief failed to stabilize consumer demand in the crucial incipient stages of a depression. Ethically — in terms of the community values involved — both the techniques of giving charity, particularly the “means” or “needs” test, and the psychological impact of receiving “charity,” undermined the self-respect and independence of the unemployed. It was these economic and ethical deficiencies to which the unemployment compensation provisions of the act responded.

The ethical aspect of this new community response lay in the social insurance principle that payments be made to an eligible claimant as a matter of right. Supporters and opponents of the Social Security Act were agreed that in this principle was the essential difference between unemployment compensation and charity. Understanding the phrase “payments as a matter of right” is

important because it represents almost the entirety of the legislative history from which one can reconstruct how Congress hoped its fundamental objectives of supporting the dignity and independence of the unemployed would be realized. It appeared ubiquitously in legislative debates and political literature.¹⁹ (footnotes omitted)

Clearly then, unemployment compensation was originally, and still is, intended to be separate from public assistance.

This fact is also supported in the legislative history of the AFDC program. The Aid to Dependent Children program, as it was originally called, was also created in the Social Security Act of 1935. The report of the Senate Committee on Finance, in discussing the aid to children provisions of H. R. 7260, the bill that was enacted, stated as follows:

The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures of the security of children. *Unemployment compensation, for instance, will benefit many children in the homes of unemployed workers;* and even old-age pensions and old age benefits will in many cases indirectly aid children in families whose resources have been drained for the support of aged grandparents.

In addition, however, there is great need for special safeguards for many underprivileged children . . . S. Rep. No. 628, *supra* at 16. (emphasis added)

From this language it is apparent that the Aid to Dependent Children program was not intended to assist the same category of children that would be benefited by unemployment compensation. The Aid to Dependent Children program was meant to cover children who were not members of families in which the father was eligible for unemployment compensation.

¹⁹ Note, *Charity versus Social Insurance in Unemployment Compensation Laws*, 73 Yale L. J. 357, 358-360 (1963).

If the Court's interpretation of the statute and regulation is followed, however, an obvious result would be to shift drastically the burden of supporting families of unemployed fathers from the unemployment compensation program to the AFDC program in those cases where the father is eligible for both and the welfare benefits prove to be more advantageous.²⁰ The total onus would be forced upon the already strained welfare budgets, while accumulated unemployment compensation funds remain intact.

As a related consequence, those former employers of unemployed fathers who are required by law to contribute to the unemployment compensation trust fund would be unjustly benefitted. Since such fathers would be permitted to forego completely the unemployment compensation to which they are entitled, these employers would benefit over time through reduced rates of contribution.²¹ It is highly doubtful that Congress intended such a potential gain to employers at the expense of the taxpayer.²²

²⁰ In addition to weighing the monetary consideration, the individual would have to consider Medicaid and Food Stamp benefits which would be automatically available to members of his family as ANFC recipients.

²¹ In Vermont, those employers who are required to contribute do so according to a rate schedule which is determined by the amount paid in to the trust fund versus the amount paid out in benefits. Basically the less paid out, the lower the rate. (Vermont's unemployment compensation program is established under the provisions of 21 V.S.A. §1301, *et seq.* Rates of employer contributions are established under 21 V.S.A. §§1324-1327.)

²² In an affidavit filed in the District Court, (Appendix at 101), appellant Philbrook estimated, on the basis of statistics contained in an affidavit submitted by an employee of the Vermont Department of Employment Security, (Appendix at 94), that the cost to Vermont in additional ANFC benefits could be as high as \$1 million in fiscal year 1975. Additionally, the federal share in Vermont could increase by approximately \$2 million.

IV. The Social Security Act does not require that all needy families receive equal benefits according to the state standard of need.

The obvious difficulty presented by the factual situations in the case at bar is that the amounts of available unemployment compensation are less than the monetary standards applicable to the ANFC-UF program. Each family involved in this litigation would have received more on welfare than through unemployment compensation.²³

The Court in the instant case has stated, at least implicitly, that economic hardship is a crucial factor, and that all needy families should receive at least the state's standard of need as established under the ANFC program. In explaining its option plan, the District Court said: "In either event, the option available to him will provide total income equal to or greater than the state standard of need" 368 F. Supp. at 218. But, as this Court has recognized in several of its decisions, there is no such requirement.

In *Dandridge v. Williams*, 397 U.S. 471 (1970), this Court upheld Maryland's maximum grant limitation which imposed an upper limit in AFDC benefits of \$250 per month. Had this limitation not been imposed, large families would have received considerably more money since their state-computed standard of need substantially exceeded the maximum grant. Despite this fact, it was held that such maximums were not prohibited by the Social Security Act. While *Dandridge* dealt only with the question of relative economic hardships within the AFDC program, the reasoning is equally applicable to the instant case which deals with the amount of benefits available under the unemployment compensation program in relation to the ANFC standard.

In *Jefferson v. Hackney*, 406 U.S. 535 (1972), this Court upheld the percentage reduction system in effect in Texas.

²³ See n. 9, *supra* at 6.

Pursuant to that system, Texas had funded its AFDC program at only 75% of the standard of need, while its other Social Security Act programs were funded at 95% and 100%. Mr. Justice Rehnquist stated at 549-559:

Similarly, we cannot accept the argument in Mr. Justice MARSHALL's dissent that the Social Security Act itself requires equal percentages for each categorical assistance program. The dissent concedes that a State might simply refuse to participate in the AFDC program, while continuing to receive federal money for the other categorical program . . . Nevertheless, it is argued that Congress intended to prohibit any middle ground — once the State does participate in a program it must do so on the same basis as it participates in every other program. Such an all-or-nothing policy judgment may well be defensible, and the dissenters may be correct that nothing in the statute expressly rejects it. *But neither does anything in the statute approve or require it.* (footnote omitted) (emphasis added)

In *Macias v. Finch*, 324 F. Supp. 1252 (N.D. Cal. 1970), *aff'd. sub nom. Macias v. Richardson*, 400 U.S. 913 (1970), plaintiffs challenged a federal regulation which defined an unemployed father under the AFDC program in terms of the number of hours worked. It was claimed, among other things, that the regulation was inconsistent with the federal statute (42 U.S.C. §607) which authorized the Secretary to establish standards for determining "unemployment." The plaintiffs claimed that a definition based on the number of hours worked was not permissible under the statute, and that a family's need must be taken into account. By disregarding need, the effect of the regulation was to deny AFDC eligibility to some families in which the father was working more hours than allowed, even though he was earning less than the state standard of need. The court rejected the challenge and

found that the regulation complied with Congressional intent and was within the scope of the statute.

In *Burr v. Smith*, *supra*, the District Court was faced with nearly an identical factual situation to the one at bar: AFDC benefits were denied solely by virtue of the unemployed father's eligibility for unemployment compensation. This resulted in economic hardship to the plaintiffs since their compensation benefits were less than the state standard of need. Despite this fact, the Court upheld the state regulation. The decision was based on an equal protection rationale, but clearly the Court would not have had to reach that issue if the Social Security Act required an equalization of benefits.

Therefore, if the Court's option plan in the instant case is premised on a presumed Congressional intent to equalize benefits among families in need, the plan must fail.

It should be noted at this point that, although the families involved in this case would have received more money from the ANFC-UF program, this is not necessarily typical.

The average monthly ANFC-UF payment in Vermont as of February, 1974²⁴ was \$327.00.²⁵ The average weekly unemployment compensation payment as of January, 1974 was \$74,²⁶ or \$318.20 monthly,²⁷ for a male with two or more dependents.²⁸

²⁴ The average payment for April, 1974 was \$334.33. See n. 8, *supra* at 5.

²⁵ See Affidavit of Paul R. Philbrook (Appendix at 101)

²⁶ See Affidavit of Robert Saliba (Appendix at 94)

²⁷ To convert from the weekly amount to the monthly amount the weekly payment was multiplied by 4.3.

²⁸ The statistical analysis was based on a computer run which identified data relating to males with two or more dependents. Females, and males with no dependents or one dependent, were not considered in the analysis because it was assumed that they would not be eligible for the UF program. If a male had one dependent, it was assumed that that dependent was a wife.

Until July, 1974, the maximum weekly benefit was \$77,²⁹ or \$331.10 monthly. Thus, the average unemployment compensation payment for males with two or more dependents was very close to the maximum benefit available. Assuming the same is true nationwide, it appears that males in this category can expect to receive at least as much, if not more, from unemployment compensation than from the AFDC-UF program. As indicated by the chart³⁰ below, the maximum unemployment compensation payment is higher than the average AFDC-UF payment in all of the jurisdictions for which statistics are available. In fact, in six of these jurisdictions, the average unemployment compensation payment is in excess of the average AFDC-UF payment.

²⁹ The maximum weekly benefit was raised in July, 1974 to \$86 weekly, or \$369.80 monthly.

**³⁰ COMPARISON OF AVERAGE AND MAXIMUM MONTHLY
UNEMPLOYMENT COMPENSATION PAYMENTS WITH
AVERAGE AFDC-UF MONTHLY PAYMENTS, BY JURISDICTION**

Jurisdiction	AFDC-UF Payment per Family ^a (Average Monthly)	Monthly Unemployment Compensation Payment	
		Average ^b	Maximum ^c
1. California	\$259.94	\$254.56	\$387.00
2. Colorado	259.85	288.44	421.40
3. Delaware	157.22	241.79	365.50
4. Dist. of Columbia	207.99	335.70	503.10
5. Guam	N/A	N/A	N/A
6. Hawaii	365.78	292.62	421.40
7. Illinois	328.37	258.60	451.50
8. Iowa	339.77	256.84	344.00
9. Kansas	251.92	234.95	339.70
10. Maryland	215.63	260.58	382.70
11. Massachusetts	305.65	277.14	580.50
12. Michigan	348.82	255.38	455.80
13. Minnesota	346.30	239.38	365.50

14. Missouri	N/A	N/A	N/A
15. Nebraska	N/A	N/A	N/A
16. New York	390.44	260.84	408.50
17. Ohio	214.96	249.83	490.20
18. Oklahoma	243.20	191.09	335.40
19. Oregon	257.88	216.03	326.80
20. Pennsylvania	260.31	297.99	447.20
21. Rhode Island	286.61	266.73	460.10
22. Utah	303.00	249.92	399.90
23. Vermont	334.33	262.30	369.80
24. Washington	288.99	264.32	369.80
25. West Virginia	210.83	193.50	460.10
26. Wisconsin	380.99	285.56	425.70

^a *Public Assistance Statistics April, 1974, supra, Table 5.*

^b Preliminary date of the U. S. Department of Labor as compiled by Division of Research and Statistics, Ohio Bureau of Employment Services, 6-25-74.

^c *Comparison of State Unemployment Insurance Laws, U. S. Department of Labor, Manpower Administration Rev. Sept. 1974.*

CONCLUSION

On the basis of the foregoing arguments, it is respectfully requested that the decision of the District Court be reversed.

KIMBERLY B. CHENEY,
Attorney General

DAVID L. KALIB,
Assistant Attorney General

DEAN B. PINELES,
Assistant Attorney General

INDEX

Opinions below	Page 1
Jurisdiction	1
Questions presented	2
Statutes and regulations involved	2
Statement	4
Summary of argument	8
Argument	10
I. The District Court's holding that 28 U.S.C. 1343(3) confers jurisdiction over the Secretary presents a difficult and complex question which this Court need not resolve	10
II. Section 407(b) of the Social Security Act bars a family from receiving AFDC benefits if the father is eligible for unemployment compensation	14
Conclusion	29

CITATIONS

Cases:

<i>Adickes v. S. H. Kress & Co.</i> , 398 U.S. 144	12
<i>Aguayo v. Richardson</i> , 473 F. 2d 1090, cer- tiorari denied, 414 U.S. 1146	12
<i>Almenares v. Wyman</i> , 453 F. 2d 1075, cer- tiorari denied, 405 U.S. 944	10
<i>Bivens v. Six Unknown Fed. Narcotics Agents</i> , 403 U.S. 388	11
<i>Burr v. Smith</i> , 322 F. Supp. 980, affirmed, 404 U.S. 1027	9, 24

Cases—Continued

	Page
<i>California Human Resources Dept. v. Java</i> , 402 U.S. 121	19, 26
<i>Cass v. United States</i> , 417 U.S. 72	15
<i>Christian v. New York State Dept. of Labor</i> , 414 U.S. 614	12
<i>City of Greenwood v. Peacock</i> , 384 U.S. 808 ..	10
<i>Dandridge v. Williams</i> , 397 U.S. 471	29
<i>Flast v. Cohen</i> 392 U.S. 83	2
<i>Georgia v. Rachel</i> , 384 U.S. 780	10
<i>Gregoire v. Biddle</i> , 177 F. 2d 579, certiorari denied, 339 U.S. 949	11
<i>Hagans v. Lavine</i> , 415 U.S. 528	2, 10-11
<i>King v. Smith</i> , 392 U.S. 309	2, 11, 12
<i>Lewis v. Martin</i> , 397 U.S. 552	23
<i>Lynch v. Household Finance Corp.</i> , 405 U.S. 538	11
<i>Moor v. County of Alameda</i> , 411 U.S. 693	8, 12
<i>Morgan v. Katzenbach</i> , 247 F. Supp. 196, reversed on other grounds, 384 U.S. 641	13
<i>Norton v. McShane</i> , 332 F. 2d 855, certiorari denied, 380 U.S. 981	11
<i>Ramirez v. Weinberger</i> , 363 F. Supp. 105, affirmed, 415 U.S. 970	12
<i>Red Lion Broadcasting Co. v. Federal Communi- cations Commission</i> , 395 U.S. 367	23
<i>Richards v. United States</i> , 369 U.S. 1	15
<i>Rosado v. Wyman</i> , 397 U.S. 397	11
<i>Secretary of the Navy v. Avrech</i> , No. 72-1713, decided July 8, 1974	13
<i>Shea v. Vialpando</i> , 416 U.S. 251	9, 17
<i>Snyder v. Harris</i> , 394 U.S. 332	11
<i>Stinson v. Finch</i> , 317 F. Supp. 581	11-12
<i>United States v. American Trucking Ass'ns.</i> , 310 U.S. 534	15

III

Cases—Continued

	Page
<i>Wheeldin v. Wheeler</i> , 373 U.S. 647.....	11
<i>Williams v. Rogers</i> , 449 F. 2d 513, certiorari denied, 405 U.S. 926.....	11
<i>Zahn v. International Paper Co.</i> , 414 U.S. 291.....	11
Constitution, statutes and regulations:	
United States Constitution:	
Fifth Amendment.....	6
Fourteenth Amendment.....	6
Social Security Act, 49 Stat. 620, as amended, 42 U.S.C. 301, <i>et seq.</i> :	
Sections 301-304, 42 U.S.C. 501-504.....	26
Section 401, <i>et seq.</i> , 42 U.S.C. 601, <i>et seq.</i>	4
Section 402(a)(7), 31 U.S.C. 602(a)(7).....	3-
4, 9, 16, 17, 21, 24, 27	
Section 406(a), 42 U.S.C. 606(a).....	4
Section 407(b)(1)(C), 42 U.S.C. 607(b) (1)(C).....	22
Section 407(b)(2)(C), 42 U.S.C. 607(b) (2)(C).....	2-3, 7
Section 407(b)(2)(C)(ii), 42 U.S.C. 607(b) (2)(C)(ii).....	<i>passim</i>
Section 420, 42 U.S.C. 620.....	26
Sections 901-908, 42 U.S.C. 1101-1108.....	26
49 Stat. 620.....	19
75 Stat. 76.....	21, 27
81 Stat. 821, 883.....	21
26 U.S.C. 3301-3311.....	26
28 U.S.C. 1331.....	11
28 U.S.C. 1343(3).....	2, 6, 8, 10, 11, 12, 14
28 U.S.C. 2281.....	2, 6
28 U.S.C. 2282.....	2, 6
28 U.S.C. 2403.....	8, 13-14
21 V.S.A. 1324-1327.....	^a 26
21 V.S.A. 1358-1359.....	26
33 V.S.A. 2554.....	26

IV

Constitution, statutes and regulations—Continued		Page
33 V.S.A. 2703.....		26
33 V.S.A. 3003.....		26
45 C.F.R. 200, <i>et seq.</i>		4
45 C.F.R. 233.20(a)(3)(ix).....		4, 9, 17
Vermont Welfare Regulation 2333.1.....		2, 3, 5

Miscellaneous:

Committee Print, Brief summary of major recommendations presented in oral and written statements during public hearings before Senate Committee on Finance, on H.R. 12080, 90th Cong., 1st Sess.....		23
Department of Health, Education and Welfare, Handbook of Public Assistance Administration, Pt. IV (1964):		
§3120.....		17
§3140(4).....		18
§3140(6).....		17, 18
Hearings before the Senate Committee on Finance, Report of the Committee on Economic Security, on S. 1130, 74th Cong., 1st Sess.....		19
H. Rep. No. 615, 74th Cong., 1st Sess.....		19, 20
H. Rep. No. 1030, 90th Cong., 1st Sess.....		9, 22, 27
H. Rep. No. 1533, 90th Cong., 2d Sess.....		27
Rule 24(a), Fed. R. Civ. P.....		13
S. Rep. No. 628, 74th Cong., 1st Sess.....		20

In the Supreme Court of the United States

OCTOBER TERM, 1974

No 74-132

**CASPAR W. WEINBERGER, SECRETARY OF HEALTH,
EDUCATION, AND WELFARE, APPELLANT**

v.

JEAN GLODGETT, ET AL.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF VERMONT**

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The original (J.S. App. 1A-15A) and supplemental (J.S. App. 16A-17A) opinions of the district court are reported at 368 F. Supp. 211 and 218.

JURISDICTION

The judgment of the district court (J.S. App. 18A-19A) was entered on February 20, 1974. The government's notice of appeal to this Court (J.S. App. 20A) was filed on April 19, 1974. By orders entered June 12, 1974, and July 10, 1974, Mr. Justice Marshall extended the time for docketing the appeal to August 17, 1974, and the jurisdictional statement was filed on that date.

On October 29, 1974, the Court postponed consideration of the jurisdictional question to the hearing on the merits (App. 105-106).

The jurisdiction of this Court rests on 28 U.S.C. 1253, since the decision below was entered by a three-judge court properly convened under 28 U.S.C. 2281 and 2282 to consider this action to restrain the enforcement of 42 U.S.C. 607(b)(2)(C)(ii) and Vermont Welfare Regulation 2333.1 as unconstitutional. See *King v. Smith*, 392 U.S. 309; *Flast v. Cohen*, 392 U.S. 83. As this Court recently recognized in *Hagans v. Lavine*, 415 U.S. 528, 543, an appeal lies to this Court where a three-judge court was properly convened, even though the court disposed of the case on a nonconstitutional ground.

QUESTIONS PRESENTED

1. Whether the district court properly held that 28 U.S.C. 1343(3), which applies to actions "[t]o redress the deprivation, under color of any State law, * * * of any right, privilege or immunity secured by the Constitution * * *," confers jurisdiction over the Secretary of Health, Education, and Welfare in this action challenging the constitutionality of 42 U.S.C. 607(b)(2)(C)(ii).

2. Whether 42 U.S.C. 607(b)(2)(C)(ii), and Vermont Welfare Regulation 2333.1, which bar families from receiving benefits under the federally-assisted Aid to Families with Dependent Children ("AFDC") program if the father receives unemployment compensation, give the father the option to decline unemployment compensation for which he is eligible in order for his family to obtain larger AFDC benefits.

STATUTES AND REGULATIONS INVOLVED

Section 407(b)(2)(C) of the Social Security Act, as amended, 42 U.S.C. 607(b)(2)(C), requires that, to be eligible for federal financial assistance, state AFDC programs must provide:

for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section—

* * * *

(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

Vermont Welfare Regulation 2333.1 provides in part (emphasis in original):

An "unemployed father" is one whose minor children are in need because he is out of work, is working part time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that:

* * * *

3. He is not receiving Unemployment Compensation during the same *week* as assistance is granted.

Section 402(a)(7) of the Social Security Act, 42 U.S.C. 602(a)(7), requires that to be eligible for federal financial participation, a state AFDC plan must:

except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent

children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earnings of any such income; * * *

Regulations of the Department of Health, Education, and Welfare at 45 C.F.R. 233.20 provide in part:

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

* * * * *

(3) *Income and resources;* OAA, AFDC, AB, APTD, AABD.

* * * * *

(ix) Provide that the agency will establish and carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state of availability.

STATEMENT

This case arises under Title IV of the Social Security Act, 42 U.S.C. 601, *et seq.*, which governs the Aid to Families with Dependent Children ("AFDC") program. The AFDC program is designed to provide public assistance on behalf of dependent children through a system of federal and state funding. In order to receive federal funding, state AFDC plans must comply with certain requirements set forth in the Act, as implemented by regulations of the Department of Health, Education, and Welfare, 45 C.F.R. 200, *et seq.*

The AFDC program is directed primarily to children who are dependent because of the "death, continued absence from the home, or physical or mental incapacity of a parent * * *." 42 U.S.C. 606(a). In addition, state AFDC plans may include children who are dependent because of the unemployment of their father. If a state plan includes children of unemployed fathers, Section 407(b)(2)(C)(ii) of the Act, 42 U.S.C. 607(b)(2)(C)(ii), requires that the state plan provide for the denial of AFDC benefits "with respect to any week for which such child's father receives unemployment compensation * * *." The Vermont AFDC plan includes children of unemployed fathers, and Vermont Welfare Regulation 2333.1 requires denial of AFDC benefits during any week when such fathers receive unemployment compensation.

This action was brought against the Secretary of Health, Education, and Welfare and the Commissioner of Vermont's Department of Social Welfare by three families claiming AFDC benefits. Each of the families was denied benefits on the ground that the father was receiving state unemployment compensation. In each instance, the amount of the unemployment compensation was less than the amount of AFDC benefits.¹

Plaintiffs sought to have Section 407(b)(2)(C)(ii) and Vermont Welfare Regulation 2333.1 declared invalid and their enforcement enjoined as contrary to the Due Process and Equal Protection Clauses of the

¹ A comparison on a monthly basis of the AFDC benefits denied and unemployment compensation received by the plaintiffs is shown below (J.S. App. 2A-3A):

Fifth and Fourteenth Amendments (App. 7-12). They also sought to represent the class of all Vermont families excluded from AFDC benefits because the father receives or is eligible for unemployment compensation (App. 11).

The three-judge district court did not reach the constitutional question because it awarded plaintiffs relief on a statutory ground. Initially, the court held that a three-judge court was appropriate under 28 U.S.C. 2281 and 2282 (J.S. App. 4A). Also, although the court's original opinion held that plaintiffs had not proved that their suit met the requisites for a class action (J.S. App. 4A-7A), its supplemental opinion states that the class action designation is largely a formality in that the judgment will bind the State as to all similarly situated persons in the future (J.S. App. 16A-17A). Jurisdiction over both state and federal defendants was sustained under 28 U.S.C. 1343(3) (J.S. App. 7A-9A).

On the merits, the court held that Section 407(b) (2)(C)(ii) affords fathers the option of refusing unemployment compensation in order to obtain the higher AFDC benefits. In its view, the language of this AFDC provision indicates "that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation" (J.S. App. 13A).

(Continued)

	AFDC	Unemployment compensation
Glodgett.....	\$239	\$60
Derosia.....	394	56
Percy.....	410	172

The court's judgment incorporates this statutory construction holding as declaratory relief, orders Vermont to advise AFDC applicants of their option to refuse unemployment compensation, and further orders the Secretary to approve Vermont's AFDC program in accordance with the court's construction of Section 407(b)(2)(C) (J.S. App. 18A-19A). The Glodgett, Percy, and Derosia families were awarded retroactive relief since the judgment grants them the option of retendering their unemployment compensation plus any amounts received under Vermont's non-federally assisted general assistance program, in order to obtain AFDC benefits (J.S. App. 19A). By stipulation, if this option is exercised, the Glodgetts will receive a total of \$207.17; the Percys, \$342; and the Derosias, \$21.20 (J.S. App. 19A).

As to all similarly situated Vermont AFDC applicants, the district court granted only prospective relief (J.S. App. 19A), which was conditionally stayed pending appeal or further order of the district court (App. 103-104). The stay was subject to the condition that Vermont provide supplemental financial assistance to those families who would be eligible for AFDC benefits but for the father's receipt of unemployment compensation. The amount of the supplemental assistance was stipulated to be the difference between the AFDC benefits for which the family would otherwise qualify and the family's earned or unearned income, including unemployment compensation (App. 103).

Both the state (No. 73-1820) and the federal defendants appealed from the district court's judgment.

On October 29, 1974, this Court ordered the cases consolidated, noted probable jurisdiction in Vermont's appeal, and postponed further consideration of the jurisdictional question in the federal case pending a hearing on the merits (App. 105-106).

SUMMARY OF ARGUMENT

I

Although 28 U.S.C. 1343(3) confers jurisdiction only to redress deprivations of rights "under color of any State law," the district court held that this provision confers jurisdiction over the Secretary in this action. It reached this result by applying the pendent party doctrine, which this Court recognized in *Moor v. County of Alameda*, 411 U.S. 693, 715, presents a "subtle and complex question * * *." The question was left open in *Moor*, and we submit that it need not be resolved here. The merits of the dispute are properly before the Court in Vermont's appeal. The Secretary will, of course, abide by the construction of 42 U.S.C. 607(b)(2)(C)(ii) adopted by this Court. In the event the case is remanded for additional proceedings—the result we advocate—we intend to resolve the jurisdictional problem by intervening pursuant to 28 U.S.C. 2403.

II

Section 407(b)(2)(C)(ii) of the Social Security Act, 42 U.S.C. 607(b)(2)(C)(ii), requires denial of AFDC benefits for any week during which the father "receives" state or federal unemployment compensa-

tion. The district court construed this section to permit the father to waive unemployment compensation which he is entitled to receive in order for his family to obtain AFDC benefits when those benefits are more than the unemployment compensation. For several reasons, however, this construction is erroneous.

The structure of the Social Security Act shows that AFDC is to be available only as a last resort. This philosophy is reflected in Section 402(a)(7), which requires states to consider all of the other income and resources available to an AFDC applicant. *Shea v. Vialpando*, 416 U.S. 251, 261. The evolution of the present Section 407(b)(2)(C)(ii) also plainly reveals that Congress did not intend AFDC payments to be made when unemployment compensation is available.

In addition, the longstanding administrative implementation of Section 402(a)(7) is that both actual and "potential sources of income that can be developed to a state of availability" must be considered in determining need of AFDC applicants. 45 C.F.R. 233.20(a)(3)(ix). This policy, which is entitled to deference by this Court, conflicts with the holding below that a father can refuse to accept unemployment compensation in order to obtain AFDC.

The legislative history of Section 407(b)(2)(C)(ii) expressly confirms this position. The section was originally enacted in 1968, and the Conference Report to that Act specifically describes Section 407(b)(2)(C)(ii) as barring AFDC where the "fathers * * * receive (or are qualified to receive) any unemployment compensation under State law." H. Rep. No. 1030, 90th Cong., 1st Sess. 57.

The question of the relationship between AFDC and unemployment compensation has arisen in only one other case. In *Burr v. Smith*, 322 F. Supp. 980 (W.D. Wash.), affirmed, 404 U.S. 1027, the decision of the three-judge district court is consistent with our interpretation of Section 407(b)(2)(C)(ii).

Finally, under the holding of the court below, the entire cost of assisting a needy family whose father is unemployed could be shifted to the AFDC program from the unemployment compensation program as supplemented by a state assistance program. This result is anomalous inasmuch as Congress has twice rejected a proposal which would have permitted AFDC to supplement, but not reduce, unemployment compensation.

ARGUMENT

I

THE DISTRICT COURT'S HOLDING THAT 28 U.S.C. 1343(3) CONFERS JURISDICTION OVER THE SECRETARY PRESENTS A DIFFICULT AND COMPLEX QUESTION WHICH THIS COURT NEED NOT RESOLVE

The district court took jurisdiction of this case solely under 28 U.S.C. 1343(3), which gives district court's jurisdiction over actions "[t]o redress the deprivation, under color of any State law, * * * of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens * * *." While the Social Security Act is not an "Act of Congress providing for equal rights * * *," *Almenares v. Wyman*, 453 F. 2d 1075, 1082, n. 9 (C.A. 2), certiorari denied, 405 U.S. 944; cf. *Georgia v. Rachel*, 384 U.S. 780, 792; *City of Greenwood v. Peacock*, 384 U.S. 808, 825,

nevertheless substantial constitutional challenges to state welfare statutes or regulations may be brought in the federal courts against state officials under Section 1343(3) and nonconstitutional claims presented in such cases may then be considered under the doctrine of pendent jurisdiction. *E.g.*, *Hagans v. Lavine*, 415 U.S. 528, 536-543; *Rosado v. Wyman*, 397 U.S. 397, 402-405; *King v. Smith*, 392 U.S. 309, 312, n. 3.

By its terms, however, Section 1343(3) does not authorize jurisdiction over federal officials, who act under color of federal, not state, law. See *Wheeldin v. Wheeler*, 373 U.S. 647, 652; *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 398, n. 1 (Harlan, J. concurring); *Gregoire v. Biddle*, 177 F. 2d 579, 581 (C.A. 2) (L. Hand, C. J.), certiorari denied, 339 U.S. 949; *Norton v. McShane*, 332 F. 2d 855, 862 (C.A. 5), certiorari denied, 380 U.S. 981; *Williams v. Rogers*, 449 F. 2d 513, 517 (C.A. 8), certiorari denied, 405 U.S. 926. In *Lynch v. Household Finance Corp.*, 405 U.S. 538, 547, this Court distinguished Section 1343(3) from 28 U.S.C. 1331 by stating that "in suits against federal officials for alleged deprivations of constitutional rights, it is necessary to satisfy the amount-in-controversy requirement for federal jurisdiction."² In accord with these deci-

² Although plaintiffs alleged that jurisdiction existed under 28 U.S.C. 1331 (App. 8), they conceded in the district court that their individual claims did not exceed \$10,000 (See Plaintiffs' Memorandum of Law, p. 7, filed in the district court on September 20, 1972), and the judgment (J.S. App. 19A) shows that the concession was well-founded. Although plaintiffs sought to satisfy the jurisdictional amount by aggregating the claims of the purported class, such aggregation is barred by *Snyder v. Harris*, 394 U.S. 332, and *Zahn v. International Paper Co.*, 414 U.S. 291.

sions, other three-judge district courts have held that Section 1343(3) does not confer jurisdiction over the Secretary in actions challenging the constitutionality of the AFDC statute. *Stinson v. Finch*, 317 F. Supp. 581 (N.D. Ga.); *Ramirez v. Weinberger*, 363 F. Supp. 105 (N.D. Ill.), affirmed, 415 U.S. 970.

In the present case, the district court relied primarily (J.S. App. 7A) upon *Aguayo v. Richardson*, 473 F. 2d 1090 (C.A. 2), certiorari denied, 414 U.S. 1146. There jurisdiction over federal and state officials in an AFDC action was sustained under Section 1343 (3) by extending the doctrine of pendent jurisdiction to parties, as well as claims, not otherwise subject to the court's jurisdiction. In *Moor v. County of Alameda*, 411 U.S. 693, 710-717, this Court recognized that the pendent party doctrine presented "a subtle and complex question with far-reaching implications." 411 U.S. at 715. The Court found it unnecessary to decide that question in *Moor*, however, because it concluded that the district court had not abused its discretion by refusing to exercise such jurisdiction on the facts of that case.

Another possible basis for extending Section 1343 (3) to provide jurisdiction over federal officials is suggested by *Christian v. New York State Dept. of Labor*, 414 U.S. 614, 617, n. 3. There this Court left open the question whether Section 1343(3) confers jurisdiction over federal officials where there has been joint participation between state and federal officers. Cf. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144. Even assuming the joint participation doctrine might be appropriate in some circumstances, its applicability

to the present case would be especially doubtful. Although "[t]he AFDC program is based on a scheme of cooperative federalism," *King v. Smith*, 392 U.S. 309, 316, the interests of the two sovereigns do not necessarily coincide. See *infra*, p. 28. Thus, the question of the district court's jurisdiction over the Secretary in this case is difficult and complex.

As in *Moor* and *Christian*, however, this jurisdictional question need not be resolved. If this Court agrees with the district court's interpretation of 42 U.S.C. 607(b)(2)(C)(ii) in this case in which jurisdiction over the state defendant has been properly invoked, the jurisdictional question with respect to the Secretary would become inconsequential since the Secretary as well as the State would, of course, administer the statute in accordance with this Court's interpretation. Cf. *Secretary of the Navy v. Avrech*, No. 72-1713, decided July 8, 1974.

If, on the other hand, this Court agrees with our view that the statute does not permit the payment of AFDC benefits to an individual who is eligible for, but declines, unemployment compensation, then the case should be remanded for the district court to decide appellees' constitutional challenges to the statute as thus construed. In that event, the government intends to end the jurisdictional controversy by filing a motion to intervene. Rule 24(a) of the Federal Rules of Civil Procedure provides for intervention as a matter of right "when a statute of the United States confers an unconditional right to intervene * * *." 28 U.S.C. 2403 provides in relevant part:³

³ The fact that a federal officer was named as a party in the
(Continued)

In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.* * *

Thus, however this Court resolves the merits of the dispute, the difficult and complex question of whether 28 U.S.C. 1343(3) provides jurisdiction over the Secretary need not be decided.

II

SECTION 407(b) OF THE SOCIAL SECURITY ACT BARS A FAMILY FROM RECEIVING AFDC BENEFITS IF THE FATHER IS ELIGIBLE FOR UNEMPLOYMENT COMPENSATION

The district court construed Section 407(b)(2)(C)(ii) of the Act, 42 U.S.C. 607(b)(2)(C)(ii), which requires denial of AFDC benefits for any week during which a father "receives unemployment compensation" (the "mandatory bar"), to afford such fathers the option of refusing to accept unemployment compensation in order to obtain AFDC benefits for their families (J.S. App. 13A-14A). As we now show, however, that holding is contrary to the basic structure of

(Continued)

complaint should not preclude intervention. In *Morgan v. Katzenbach*, 247 F. Supp. 196 (D.D.C.), reversed on other grounds, 384 U.S. 641, the United States was permitted to intervene under 28 U.S.C. 2403 even though the Attorney General of the United States was named as a defendant.

the Social Security Act, its legislative history, consistent administrative construction, and the only precedent in point. Moreover, the district court's construction of Section 407(b)(2)(C)(ii) is likely to have the anomalous result of shifting significant costs in assisting the unemployed from the state unemployment compensation program, which is funded by taxes on private employers, to the AFDC program, which is funded by general federal and state revenues.

Appellees argued in their motion to affirm (pp. 6-7) that resort to the traditional aids to statutory construction is improper because the meaning of "receives" in Section 407(b)(2)(C)(ii) is unambiguous. To the contrary, however, "[w]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" *United States v. American Trucking Ass'ns.*, 310 U.S. 534, 543-544 (footnotes omitted); *Cass v. United States*, 417 U.S. 72, 78-79. Moreover, the meaning of the word "receives" in Section 407(b)(2)(C)(ii) should not be determined "in isolation from the context of the whole Act" (*Richards v. United States*, 369 U.S. 1, 11), for, as this Court has held, " * * * in fulfilling our responsibility in interpreting legislation, 'we must not be guided by a single sentence * * *, but [should] look to the provisions of the whole law, and to its object and policy.'" *Ibid.* Thus, it is appropriate to consider the aids to statutory construction to which we now turn.*

* In their complaint in the district court, plaintiffs challenged only the constitutionality of Section 407(b)(2)(C)(ii) and the

(Continued)

1. The basic structure of the Social Security Act contemplates that state unemployment compensation

(Continued)

Vermont regulation, stating that that section "provides that assistance * * * cannot be granted if the father is eligible for or receiving unemployment compensation" (App. 9; see, Transcript of March 5, 1973, p. 2). In the memorandum supporting our motion to dismiss the complaint or alternatively for judgment on the pleadings or summary judgment, we stated, "It is the receipt of unemployment benefits and not merely eligibility for such benefits which is the operative factor here; Section 607(b)(2)(C)(ii) turns on receipt of unemployment compensation, not eligibility for such benefits." Memorandum of Law in Support of Motions of Defendant Richardson, filed August 16, 1972, p. 7, n. 2. Subsequently, after the statutory construction issue was raised at oral argument (Transcript of March 5, 1973, pp. 42-44, 55-57), we submitted a supplemental memorandum stating:

"* * * Congress did not want to cut off AFDC solely on the basis of *eligibility* for unemployment compensation, where a delay of weeks between eligibility and actual payment might result from forces beyond the recipient's control, *e.g.*, state inefficiency or red tape. On the other hand, a recipient clearly may not take advantage of Congress' concern in this area by purposefully refusing unemployment compensation for which he is eligible, thereby defeating the comprehensive unemployment-AFDC scheme of Congress." Memorandum of Law, filed March 27, 1973, p. 6.

In this memorandum the government thus clarified its earlier position. The district court's statement that the defendants concur in its view that "the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation" (J.S. App. 13A) overlooks the clarifying statement in our memorandum of March 27, 1973.

The import of the government's memoranda in the district court and the position that we urge here is that while Congress did not intend to terminate AFDC benefits prior to the actual availability of unemployment compensation, neither did it intend that a father be permitted to decline unemployment compensation. Thus, eligibility for unemployment compensation imposes an obligation to exhaust this resource (Section 402(a)(7)). Failure to apply will result in denial of AFDC, but the

programs are to be the primary source of assistance to unemployed fathers, and that the federally-aided AFDC payments will be made only where such state compensation is not available. Section 402(a)(7) of the Act, 42 U.S.C. 602(a)(7), clearly shows that AFDC is to be available only as a last resort. That section states that, except as otherwise provided, "the State agency shall, in determining need [under the AFDC program], take into consideration any other income and resources of any child or relative claiming" AFDC. As this Court recently observed, "Congress has been careful to ensure that *all* of the income and resources properly attributable to a particular applicant be taken into account * * *." *Shea v. Vialpando*, 416 U.S. 251, 261 (emphasis in original).

Reflecting the congressional purpose that AFDC be a program of last resort, the longstanding administrative implementation of Section 402(a)(7) has required that in determining need of AFDC applicants, a state must consider both actual and "potential sources of income that can be developed to a state of availability." Department of Health, Education, and Welfare's Handbook of Public Assistance Administration, Pt. IV, § 3120 (1964), now 45 C.F.R. 233.20(a)(3)(ix). The Handbook makes clear that this policy is particularly applicable to statutory benefits that can be developed upon application, and unemployment compensation is specifically identified as such as a resource.

mere fact that application has been made does not result in termination of AFDC benefits until such time as unemployment compensation is received or would have been received but for a father's refusal to accept it.

Department of Health, Education, and Welfare's Handbook of Public Assistance Administration, Pt. IV, § 3140(6). Thus, the Secretary has consistently maintained that the Act "does not give any individual a right to have his needs met out of an assistance program because of his refusal to accept any resource that is available to him upon application."⁵

The district court's construction of Section 407(b) (2)(C)(ii)—the mandatory bar provision—to permit an unemployed father to refuse unemployment com-

⁵ While this statement occurs in the provision which requires an AFDC applicant to apply for reduced old-age benefits at age 62, rather than awaiting eligibility for full benefits at age 65, it is clear that this principle is equally applicable to other statutory benefits enumerated in a subsequent provision of the Handbook which incorporates the old-age benefits provision by reference. The relevant portions of the Handbook provide:

"§ 3140(4). * * * Without question, the Act intends that such individuals should have a legal right to decide whether to file for the reduced benefits or wait until they reach sufficient age to receive benefits without reduction, just as any individual has the legal right to decide that he will not apply for any OASDI benefits under any circumstances. The Federal act, however, does not give any individual a right to have his needs met out of an assistance program because of his refusal to accept any resource that is available to him upon application.

"§ 3140(6). In addition to OASDI, other statutory benefits to which applicants and recipients for public assistance may qualify, include unemployment insurance, temporary disability insurance, railroad retirement benefits, civil service retirement benefits, other government retirement benefits (Federal, State, county and local), and veterans benefits.

"It is important that the State's policies and procedures for determining eligibility on the basis of need include clear instructions to staff for identifying cases in which such statutory benefits might be a resource, and, with respect to such cases, the process of determining the availability of such resources."

pensation effectively nullifies Congress' intent that an AFDC applicant develop income from all available resources.⁶

2. The district court's construction of the mandatory bar provision is also contrary to the congressional policy concerning unemployment compensation programs. The history of Congress' adjustments of the relationship between AFDC and employment compensation demonstrates that Congress intended that AFDC not be available when unemployment compensation can be obtained.

Congress first provided incentives for states to establish AFDC and unemployment compensation programs in the Social Security Act of 1935. 49 Stat. 620. In its original form, AFDC was not available to children of unemployed fathers. Congress viewed unemployment compensation as the means by which persons temporarily out of work would be aided until they found new employment. As this Court recognized in *California Human Resources Dept. v. Java*, 402 U.S. 121, 131, the unemployment compensation program was intended to be the "first line of defense for * * * [a worker] ordinarily steadily employed,"⁷ and its purpose was "to enable workers 'to tide themselves

⁶ It should be noted that development of income from resources ordinarily results in a reduction of AFDC benefits. In the case of unemployment compensation, however, development of income results in termination of AFDC benefits for the period in which compensation or could be obtained. This treatment of unemployment compensation reflects the fact that Congress regards AFDC and unemployment compensation as mutually exclusive programs. See pp. 19-21, *infra*.

⁷ Quoting the Hearings before the Senate Committee on Finance, on S. 1130, Report of the Committee on Economic Security, 74th Cong., 1st Sess. 1321.

is
received

over, until they get back to their old work or find other employment, without having to resort to relief" (quoting H. Rep. No. 615, 74th Cong., 1st Sess. 7).^{*}

In 1961, the AFDC program was extended for the first time to cover children of an unemployed parent (father or mother). Under the 1961 amendment, states participating in the AFDC program were authorized, but not required, to deny part of or all AFDC benefits "if the unemployed parent * * * re-

^{*} The pertinent part of this House Report states (*ibid.*):

"In normal times [unemployment compensation] will enable most workers who lose their jobs to tide themselves over, until they get back to their old work or find other employment, without having to resort to relief. * * * Unemployed workmen who cannot find other employment within reasonable periods will have to be cared for through work relief or other forms of assistance, but unemployment compensation will greatly reduce the necessity for such assistance. Unemployment compensation is greatly preferable to relief because it is given without any means test."

Like this House Report, the Senate Report also shows that the original design was that assistance programs based on need, such as AFDC, would be made only if unemployment compensation had been exhausted or was unavailable:

"Such unemployment compensation is not a complete safeguard against the hazard of unemployment. In periods of prolonged depression many workmen will exhaust their compensation benefits before they find other employment. This will hold true of some workmen even in periods of prosperity. Supplemental to unemployment compensation there will still be need for work relief for those whose compensation rights have been exhausted, as well as for workers who are outside of the compensation system.

"But unemployment compensation does have real value for many workers. In normal times most workers will secure other employment before exhaustion of their benefit rights. * * * For the great bulk of industrial workers unemployment compensation will mean security during the period following unemployment while they are seeking another job, or are wait-

ceives unemployment compensation." 75 Stat. 76. But whether a state provided for termination or only reduction of AFDC benefits when unemployment compensation was available, the obligation to develop income from resources, including unemployment compensation, remained in force.

In 1968, Congress made the optional provision mandatory by amending the Act to require that AFDC be denied if and so long as such child's "father * * * receives unemployment compensation under an unemployment compensation law of a State or of the United States." 81 Stat. 821, 883. Again, as in 1961, the requirement that income be developed from available resources remained intact.*

3. The legislative history of the 1968 amendment (the mandatory bar) demonstrates that Congress intended that an unemployed father would be required to exhaust the unemployment compensation resource, and upon the availability of such benefits, AFDC would be terminated. The Conference Report on the 1968 Act explained:

* * * Section 407 of the Social Security Act, as amended by section 203(a) of the House bill defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to exclude fathers who do not

ing for a return to their old position. In most cases the compensation they will receive will be all that they will need. While unemployment compensation will not do away entirely with the necessity for relief, it should very materially reduce the costs of relief in future years." S. Rep. No. 628, 74th Cong., 1st Sess. 11-12.

* Had Congress intended to alter this requirement, it would have amended Section 402(a) (7).

have 6 or more quarters of work in any 13-calendar-quarter period ending within one year prior to the application for aid, and fathers who receive (*or are qualified to receive*) any unemployment compensation under State law.

The Senate amendments removed these exclusions, and restored the provision of present law under which a State may at its option wholly or partly deny AFDC for any month where the father receives unemployment compensation during the month. * * *

The Senate recedes * * *.

H. Rep. No. 1030, 90th Cong., 1st Sess. 57 (emphasis added).

In their motion to affirm (pp. 12-13), appellees argue that the Conference Committee used the phrase "qualified to receive" unemployment compensation in reference to the eligibility requirement of Section 407(b)(1)(C), not to the mandatory bar provision, Section 407(b)(2)(C)(ii). But the Conference Report cannot fairly be given appellees' interpretation because the report refers to the *exclusion* of "fathers who receive (or are qualified to receive) any unemployment compensation." The eligibility provision (Section 407(b)(1)(C)) expressly *includes* such fathers where receipt or qualification to receive occurred in the preceding year, but in the mandatory bar provision *excludes* during any current week in which unemployment compensation is received or when an unemployed father is eligible to receive it.

Any doubt as to the meaning of the Conference Report is removed by the Senate Committee on Finance, which summarized the major recommendations presented to the Committee in the House version

of the 1968 Act.¹⁰ In summarizing testimony against Section 407(b)(2)(C)(ii), the report described this provision as "*not allowing payment if father is eligible for unemployment compensation.*" Committee Print, Brief summary of major recommendations presented in oral and written statements during public hearings before Senate Committee on Finance, on H.R. 12080, 90th Cong., 1st Sess. 32. Like the Conference Committee, the Senate Committee thus also viewed the provision as barring AFDC payments to persons qualified for unemployment benefits.

Finally, when Congress used the word "receives" in Section 407(b)(2)(C)(ii), it legislated in light of the Secretary's consistent view that an applicant for AFDC must first develop income from all other resources, including unemployment compensation if available (see pp. 17-18, *supra*). Accordingly, the Secretary's view is entitled to deference under the principle that "the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong, especially when Congress has refused to alter the administrative construction." *Red Lion Broadcasting Co. v. Federal Communications Commission*, 395 U.S. 367, 381 (footnotes omitted); see *Lewis v. Martin*, 397 U.S. 552. Here, as discussed above, the Conference Report to the 1968 amendment shows that Congress not only refused to alter the Secretary's construction, but indeed endorsed it.

¹⁰ The initial House version of Section 407(b)(2)(C)(ii) was identical to the one Congress enacted.

4. The decision in the only other case¹¹ of which we are aware that has considered the question of the relationship between AFDC and unemployment compensation, is consistent with our position. In *Burr v. Smith*, 322 F. Supp. 980 (W.D. Wash.), affirmed, 404 U.S. 1027, AFDC applicants challenged the constitutionality of the Washington statute and welfare regulation implementing Section 407(b)(2)(C)(ii). The regulation provided: "An otherwise eligible child shall be ineligible for AFDC-E with respect to any week for which his father receives unemployment compensation." 322 F. Supp. at 983. The district court in *Burr* held that "[a] father cannot avoid disqualification simply by failing to register for and receive unemployment compensation." 322 F. Supp. at 984, n. 5. Although the federal statute was not in issue in *Burr*, the district court noted that the state regulation was required by federal law, and the court then concluded that, as thus construed, the exclusion provision was valid.

5. The district court erroneously construed the mandatory provision because, we submit, it did not recognize the significance of Section 402(a)(7)'s requirement that an AFDC applicant develop income from all available resources.¹² The decision below permits the circumvention of that requirement in order to insure that "families of unemployed fathers, like other fami-

¹¹ The proper construction of Section 407(b)(2)(C)(ii) is presently at issue in *Salamone v. Mason*, Civil Action No. M-74-656 (D. Md., filed June 25, 1974). On November 4, the district court issued an order staying proceedings pending this Court's decision in this case.

¹² Unfortunately, the government did not call the district

lies applying for AFDC, should be assured of receiving an income equal to the state standard of need, irrespective of their eligibility to receive outside income" (J.S. App. 14A). This result is, however, simply not what Congress intended. Congress could, of course, have provided that unemployment compensation be treated as any other resource, *i.e.*, causing a reduction rather than a termination of AFDC; and had it wished to do so in 1968 it would have repealed the provision which permitted states to deny AFDC if unemployment compensation was available. Instead, it adopted the mandatory bar provision.

Moreover, the district court's decision does not merely place families with unemployed fathers on the same footing as other AFDC families. The circumvention of the obligation to exhaust unemployment compensation has important implications for the administration of the AFDC-UF program because it will have the anomalous result of shifting significant costs of assisting the unemployed from the unemployment compensation program to the AFDC program. Twenty-four states in addition to Vermont participate in the program for unemployed fathers. Since the amount the states pay as unemployment compensation frequently varies from family to family, it is impossible to estimate in what proportion of cases AFDC payments would exceed state unemployment insurance

court's attention to Section 402(a)(7). The statutory construction issue arose at oral argument. The government's memorandum of March 27, 1973, asserted that the question whether Section 407(b)(2)(C)(ii) permitted an AFDC applicant to refuse unemployment compensation was not presented since all plaintiffs had in fact received such benefits.

benefits. The instances of such excess are likely to be substantial, however, and whenever there is such a difference, the decision below will probably lead to the shifting of a substantial number of claims which would otherwise be borne by the unemployment compensation program to the state and federally-funded AFDC program.¹³ Commissioner Philbrook of the Vermont Department of Social Welfare estimates that for fiscal year 1975, the additional AFDC costs to Vermont under the district court's decree could be \$1 million (App. 101-102). The additional federal share in Vermont would then be approximately \$2 million.

As we have shown above, Congress viewed unemployment insurance as the primary source through which unemployed parents would receive financial assistance, and intended AFDC to be available only when unemployment insurance was unavailable. The effect of the decision below would be to permit the federally-assisted AFDC program to be used to subsidize unemployed parents for what they consider inadequacies in a state compensation program. That is not what Congress intended when it barred AFDC benefits to persons who "receive" unemployment compensation.

¹³ The AFDC program is funded by appropriations from general federal and state revenues. 42 U.S.C. 620; 33 V.S.A. 2554, 2703. Vermont's general assistance program is also funded by general state revenues. 33 V.S.A. 3003. In contrast, unemployment compensation in Vermont and other states is paid from a separate fund, which consists of funds collected from private employers, 21 V.S.A. 1324-1327, 1358-1359, and money credited to the State's account in the federal Unemployment Trust Fund, 42 U.S.C. 501-504, 1101-1108, which is also funded by a tax on employers, 26 U.S.C. 3301-3311. *California Human Resources Dept. v. Java, supra*, 402 U.S. at 126.

Indeed, the district court's decision would shift more of the costs to the AFDC program than the plan which Congress tried but then twice rejected. As noted above, between 1961 and 1968, states were granted the option to deny part or all AFDC benefits "if the unemployed parent * * * receives unemployment compensation." 75 Stat. 76. If this provision were in effect today and a state chose not to bar AFDC benefits completely, Section 402(a)(7), as construed by the Secretary, would nonetheless require that a family's AFDC benefits be reduced by the amount of unemployment compensation actually received or potentially available. Under such a system, then, in contrast to the district court's result, the unemployment compensation program would bear at least part of the cost of assisting the family.

In 1967 and 1968, the Senate passed bills which would have retained this optional system, but on both occasions, the House insisted upon the present mandatory bar embodied in Section 407(b)(2)(C)(ii). H. Rep. No. 1030, 90th Cong., 1st Sess. 57; H. Rep. No. 1533, 90th Cong., 2d Sess. 49. After Congress has twice rejected a proposal which would have permitted the extension of AFDC to families without reducing the costs to be borne by unemployment compensation, it is indeed anomalous that the district court would construe Section 407(b)(2)(C)(ii) to permit a father to choose to forego unemployment compensation altogether in order to receive AFDC benefits. That holding enables the unemployment compensation program to be relieved entirely of the burden of assisting the family while the entire burden will be shifted to the AFDC program.

Admittedly, the mandatory bar provision may produce harsh results where there is a significant disparity in benefits between AFDC and unemployment compensation.¹⁴ Congress, however, concerned with increasing costs of the AFDC program, deliberately adopted the mandatory bar in 1968. The provision accomplishes its primary purposes of reducing the financial burdens of the AFDC program. In addition, although not articulated in the legislative history, the provision may also serve to induce states to upgrade their unemployment compensation programs, or to develop or upgrade general assistance programs.

¹⁴ This harshness is mitigated to some extent by the fact that the termination of AFDC lasts only as long as unemployment compensation is available. In some cases the disparity in benefits will be reduced by state general assistance program benefits. Such a program exists in Vermont although the record is unclear as to its benefit levels.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed, and the case should be remanded for consideration of the constitutional issues.¹⁵

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

CARLA A. HILLS,
Assistant Attorney General.

WILLIAM L. PATTON,
Assistant to the Solicitor General.

LEONARD SCHAITMAN,

ANTHONY J. STEINMEYER,
Attorneys.

JOHN B. RHINELANDER,
General Counsel,

GALEN D. POWERS,
Assistant General Counsel,

MICHAEL H. COOK,
Attorney,

*Department of Health,
Education, and Welfare.*

December 1974.

¹⁵ Although this Court has on occasion considered issues not decided by the court below (e.g., *Dandridge v. Williams*, 397 U.S. 471, 476, n. 6), we submit that it would be inappropriate to do so here. Appellees' constitutional claims were not reached by the district court, and while these claims were argued below, in our view the claims should be considered by the district court in light of a proper construction of the statute.

LIBRARY
SUPREME COURT, U. S.

FILE

FEB 13 1974

IN THE
Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1820

PAUL R. PHILBROOK, etc.,

Appellant,

v.

JEAN GLODGETT, et al.,

Appellees.

No. 74-132

**CASPAR W. WEINBERGER, SECRETARY OF
HEALTH, EDUCATION AND WELFARE,**

Appellant,

v.

JEAN GLODGETT, et al.

Appellees.

**APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

CONSOLIDATED BRIEF OF PLAINTIFF-APPELLEES

RICHARD S. KOHN

Box 43

Danville, Vermont 05602

Vermont Legal Aid, Inc.

St. Johnsbury, Vermont 05819

(i)

TABLE OF CONTENTS

	<i>Page</i>
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	7
ARGUMENT	
I. JURISDICTION OVER THE VERMONT DEPARTMENT OF SOCIAL WELFARE	
(a) The district court had, subject matter, jurisdiction under <i>Hagans v. Lavine</i> , 415 U.S. 528, 94 S.Ct. 1372 (1974) over the claim that Vermont Welfare Reg. 2331.31 conflicts with 42 U.S.C. Section 607(b)(2)(C)(ii)	10
(b) If the equal protection claim were held to be insubstantial under <i>Burr v. Smith</i> , <i>supra</i> , the court had jurisdiction under 1343(3) and (4) to determine the statutory conflict issue	14
II. SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIM THAT 42 U.S.C. SECTION 607(b) (2) (C) (ii) violates the due process clause of the Fifth Amendment	
(a) Introduction	18
(b) Assuming the Court finds that the claim against the Vermont Regulation implementing 607(b)(2)(C)(ii) raises a substantial constitutional question, then the District Court had pendent jurisdiction over plaintiffs' claim that 607(b)(2)(C)(ii) violates the Fifth Amendment	20

(ii)

Page

(c) Assuming the primary jurisdiction conferring claim was insubstantial, the Court had subject matter jurisdiction over plaintiffs' claim that 42 U.S.C. Section 607 (b)(2)(C)(ii) violates the Fifth Amendment under 28 U.S.C. Section 133124

(1) The jurisdictional amount is satisfied if the amount of the matter in controversy is determined from the defendants' viewpoint25

(2) The Court has subject matter jurisdiction over the claims against the Secretary of HEW under 28 U.S.C. Section 1331 by aggregating the plaintiffs' claims27

(d) The district court had jurisdiction over the plaintiffs' claim that Section 607(b)(2)(C)(ii) is unconstitutional under the Mandamus statute, 28 U.S.C. Section 136131

(e) The Court has jurisdiction under Section 10 of the Administrative Procedure Act, 5 U.S.C. Section 70235

III. THE COURT PROPERLY HELD THAT 42 U.S.C. SECTION 607(b)(2)(C)(ii) PROVIDES FAMILIES WITH AN OPTION AND EXCLUDES FAMILIES FROM ANFC-UF benefits for only those weeks in which an otherwise eligible father elects to receive unemployment compensation

(a) The statutory language is clear, making it unnecessary to explore the purposes of the statute by resorting to the legislative history36

(iii)

Page

(b) Assuming the circumstances of this case require resort to the legislative history, that history is at best inconclusive and, in any event, is not at variance with the district court's reading of the statute	47
(c) Under the circumstances of this case, the interpretation given by the statute by HEW is not entitled to special consideration	56
(d) The district court's interpretation does not conflict with the purposes of the unemployment compensation program	57
IV. 42 U.S.C. SECTION 607(b)(2)(C)(ii), ASSUMING IT CREATES AN AUTOMATIC AND TOTAL DISQUALIFICATION FROM ANFC-UF IF THE FATHER IS QUALIFIED TO RECEIVE UNEMPLOYMENT COMPENSATION, VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT	
(a) The Court should reach and decide the constitutional issue on the merits even though it was not passed upon by the district court	62
(b) 607(b)(2)(C)(ii) violates the due process clause of the Fifth Amendment because it discriminates against classes of children according to the source of the father's income and not the need of the children	
(i) Standard of Review	64
(ii) Consideration of the mandatory bar provision within the analytical framework of <i>USDA v. Moreno</i>	
(A) Statutory Purpose	66

(B) Legislative history and other suggested justifications for the bar	69
CONCLUSION	76

TABLE OF AUTHORITIES

Cases:

Aetna Casualty Co. v. Flowers, 330 U.S. 464 (1947)	
Aguayo v. Richardson, 473 F.2d 1090 (2d Cir. 1973) <i>cert. denied</i> , 414 U.S. 1146 (1974)	63
Alcala v. Burns, 494 F.2d 743 (8th Cir. 1974)	23, 35
Allen v. State Board of Elections, 393 U.S. 544 (1969)	57
	37, 46
Almenares v. Wyman, 453 F.2d 1075 (2d Cir. 1971), <i>cert. denied</i> 405 U.S. 944 (1970)	23
Anderson v. Burson, 300 F.Supp. 401 (N.D. Ga. 1968)	72
Ashe v. McNamara, 355 F.2d 277 (1st Cir. 1965)	33
Association of Data Processing Service Organization, Inc. v. Camp, 397 U.S. 150 (1970)	34
Astor-Honor, Inc. v. Grossett & Dunlap, Inc., 441 F.2d 627 (2d Cir. 1971)	22
Barlow v. Collins, 397 U.S. 159 (1970)	34
Bass v. Richardson, 338 F.Supp. 478 (S.D.N.Y. 1971)	29
Bass v. Rockefeller, 331 F.Supp. 945 (S.D.N.Y. 1971) <i>vacated and cause remanded on other grounds</i> , 464 F.2d 1300 (2d Cir. 1971)	28
Bate Refrigerating Co. v. Sulzberger, 157 U.S. 1 (1895)	56
Berman v. Narragansett Racing Ass'n., Inc., 414 F.2d 311 (1st Cir. 1969) <i>cert. denied</i> 396 U.S. 1037 (1970)	29

Bethea v. Mason, 43 U.S.L.W. 2261 (D. Md. Nov. 12, 1974)	12
Bolling v. Sharpe, 347 U.S. 497 (1954)	64
Bomar v. Keyes, 162 F.2d 136 (2d Cir.) <i>cert. denied</i> , 332 U.S. 825 (1947)	15
Bradford v. Juras, 331 F.Supp. 167 (D.Or. 1971)	72
Broenan v. Beaunit Corp., 305 F.Supp. 688 (E.D.Wis. 1969) <i>aff'd</i> , 440 F.2d 1244 (7th Cir. 1970)	29
Burnet v. Coronado Oil and Gas Co., 285 U.S. 393 (1932)	13
Burr v. Smith, 322 F.Supp. 980 (W.D.Wash. 1971), <i>aff'd</i> , 404 U.S. 1027 (1972)	7-8, 11, 12, 69
California Department of Human Resources Development v. Java, 402 U.S. 121 (1971)	44, 67
Carey v. Local Board No. 2, 297 F.Supp. 252 (D.Conn. 1969), <i>aff'd</i> , 412 F.2d 71 (2d Cir. 1969)	33
Carleson v. Remillard, 406 U.S. 598 (1972)	57, 61, 62
Carver v. Hooker, 501 F.2d 1244 (1st Cir. 1974) ...	19, 57, 58
Cass v. United States, 417 U.S. 72 (1974)	37, 38
City of Greenwood v. Peacock, 384 U.S. 808 (1966)	15
Connecticut Union of Welfare Employees v. White, 55, F.R.D. 481 (D.Conn. 1972)	15
Cooper v. Laupheimer, 316 F.Supp. 264 (E.D.Pa. 1970)	59, 72
Cortright v. Resor, 325 F.Supp. 797 (E.D.N.Y. 1971), <i>rev'd. on other grounds</i> , 447 F.2d 245 (2d Cir. 1971), <i>cert. denied</i> , 405 U.S. 965 (1972)	33
Dandridge v. Williams, 397 U.S. 471 (1970) ...	62, 65, 66, 73, 74

	<i>Page</i>
DeSylva v. Ballentine, 351 U.S. 570 (1956)	57
Dillenburg v. Kramer, 469 F.2d 1222 (9th Cir. 1972)	12
Doe v. Hodgson, 478 F.2d 537 (2d Cir. 1973), <i>cert.</i> <i>denied</i> 414 U.S. 1096 (1973)	13
Doe v. Hodgson, 500 F.2d 1206 (2d Cir. 1974)	13
Doe v. Lukhard, 363 F.Supp. 823 (E.D.Va. 1973), <i>aff'd</i> 493 F.2d 54 (4th Cir. 1974)	57
Edelman v. Jordan, 94 S.Ct. 1347 (1974)	12, 13
Ex Parte Collett, 337 U.S. 55 (1949)	9, 46, 55
Flast v. Cohen, 392 U.S. 83 (1968)	36
Francis v. Davidson, 340 F.Supp. 351 (D.Md.) <i>aff'd</i> . 409 U.S. 904 (1972)	19, 45, 56
Galvan v. Lavine, 490 F.2d 1255 (2d Cir. 1973)	28
Garfield v. United States ex rel. Goldsby, 211 U.S. 249 (1908)	32, 34
Gemsco, Inc. v. Walling, 324 U.S. 244 (1945)	50, 56
Glodgett v. Betit, 368 F.Supp. 211 (D. Vt. 1973)	19, 21, 23, 51
Glover v. McMurray, 361 F.Supp. 235 (S.D.N.Y. 1973) <i>rev'd on other grounds</i> , 487 F.2d 403 (2d Cir. 1973)	23
Goldberg v. Kelly, 397 U.S. 254 (1970)	16
Gomez v. Florida State Employment Service, 417 F.2d 569 (5th Cir. 1969)	16
Hagans v. Lavine, 415 U.S. 528, 94 S.Ct. 1372 (1974)	10, 11, 15, 21
Helvering v. City Bank Farmers Trust Co., 296 U.S. 85 (1935)	8, 37, 38
Illinois v. City of Milwaukee, 406 U.S. 91 (1972)	25
Jefferson v. Hackney, 406 U.S. 535 (1972)	46, 66, 74
Jimenez v. Weinberger, 94 S.Ct. 2496 (1974)	74

	<i>Page</i>
Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968)	
Katzenbach v. Morgan, 384 U.S. 641 (1966)	17, 20
Kelley v. Metropolitan County Board of Education, 372 F.Supp. 528 (M.D.Tenn. 1973)	24, 33, 34
Kendall v. United States ex rel. Stokes, 37 U.S. (12 Peters) 524 (1838)	31
King v. Smith, 392 U.S. 309 (1968)	58, 67, 68, 69, 72
Kletschka v. Driver, 411 F.2d 436 (2d Cir. 1969)	24
Kuehner v. Irving Trust Co., 299 U.S. 445 (1937)	37, 46
Langnes v. Green, 282 U.S. 531 (1931)	62, 63
Levy v. Louisiana, 391 U.S. 68 (1968)	9, 72
Liberation News Service v. Eastland, 426 F.2d 1379 (2d Cir. 1970)	24
Long v. Parker, 390 F.2d 816 (3rd Cir. 1968)	33
Lynch v. Household Finance Co., 405 U.S. 538	16
Macias v. Finch, 324 F.Supp. 1252 (N.D.Cal.) <i>aff'd.</i> <i>sub. nom. Macias v. Richardson</i> , 400 U.S. 913 (1970)	4, 24, 38, 75
Malat v. Riddell, 383 U.S. 569	46
Mayor of City of Philadelphia v. Educational Equality League, 94 S.Ct. 1323 (1974)	19
Memorial Hospital v. Maricopa County, 94 S.Ct. 1076 (1974)	69
McIntire v. Wood, 11 U.S. (7 Cranch) 504 (1813)	31
Miller v. Standard Federal Savings and Loan Association, 347 F.Supp. 185 (E.D. Mich. 1972)	25
Mitchum v. Foster, 407 U.S. 225 (1972)	18
Monroe v. Pape, 365 U.S. 167 (1961)	18
Moor v. County of Alameda, 411 U.S. 693 (1973)	7, 16, 21, 22, 23
Murray v. Vaughn, 300 F.Supp. 688 (D.R.I. 1969)	33

(viii)

	Page
National Association of Government Employees v. White, 418 F.2d 1126 (D.C.Cir. 1969)	33
National Welfare Rights Organization v. Weinberger, 377 F.Supp. 861 (D.D.C. 1974)	25
New Jersey Welfare Rights Organization v. Cahill, 483 F.2d 723 (3rd Cir. 1973)	29
NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175 (1967)	37
O'Keefe v. New York City Board of Elections, 246 F.Supp. 978 (S.D.N.Y. 1965)	20
Osaka Shoshen Kaisha Line v. United States, 300 U.S. 98 (1937)	36
Packard Motor Car Co. v. NLRB, 330 U.S. 485 (1947)	46
Perry v. Commerce Loan Co., 383 U.S. 392 (1966)	41
Pinel v. Pinel, 240 U.S. 594 (1916)	28, 29
Powelton Civic Home Owners Association v. Department of Housing and Urban Development, 284 F.Supp. 809 (E.D.Pa. 1968)	24
Richards v. United States, 369 U.S. 1 (1962)	37
Richardson v. Belcher, 404 U.S. 78 (1971)	65, 66, 72
Ronzio v. Denver R. G. W. R. Co., 116 F.2d 604 (10th Cir. 1940)	26
Rosado v. Wyman, 397 U.S. 397 (1970)	15, 22
Rusk v. Cort, 369 U.S. 367 (1962)	36
Salamone v. Mason, Civ.Action No. M-74-656 (D.Md. filed June 25, 1974)	64
Shapiro v. Thompson, 394 U.S. 618 (1969)	53, 69
Shaughnessy v. Pedreiro, 349 U.S. 48 (1955)	36
Shea v. Vialpando, 416 U.S. 251 (1974)	56

	<i>Page</i>
Smith v. McNamara, 395 F.2d 896 (19th Cir. 1968) <i>cert. denied</i> 394 U.S. 934 (1969)	33
Snyder v. Harris, 394 U.S. 332 (1969)	24, 28, 29
Swift & Co., Inc. v. Wickham, 382 U.S. 111 (1965)	15
Tatum v. Laird, 444 F.2d 947 (D.C. Cir. 1971) <i>rev'd on other grounds</i> , 408 U.S. 1 (1972)	25
Townsend v. Swank, 404 U.S. 282 (1971)	15, 57
Troy Bank v. G. A. Whitehead & Co., 222 U.S. 39 (1911)	27, 28
United Mine Workers v. Gibbs, 383 U.S. 715 (1966)	14
United States Department of Agriculture v. Moreno, 93 S.Ct. 2821 (1973)	9, 64, 65, 66, 70
United States Department of Agriculture v. Murry, 93 S.Ct. 2832 (1973)	72
United States ex rel. Epton v. Nenna, 318 F.Supp. 899 (S.D.N.Y. 1970)	13
United States v. American Trucking Associations, Inc., 310 U.S. 534 (1940)	37, 38
United States v. Ballard, 322 U.S. 78 (1944)	62, 63
United States v. Oregon, 366 U.S. 643, 648 (1961)	55
United States v. Shreveport Grain and Elevator Co., 287 U.S. 77 (1932)	37, 38, 53
Walker v. Blackwell, 360 F.2d 66 (5th Cir. 1966)	33
Welsh v. United States, 398 U.S. 333 (1970)	75
Wilbur v. United States, ex rel. Vindicator Consoli- dated Gold Mining Company, 284 U.S. 231 (1931)	37, 46
Workman v. Mitchell, 562 F.2d 1201 (9th Cir. 1974)	33
Yanez v. Jones, 361 F.Supp. 701 (D. Utah 1973)	29

Zahn v. International Paper Co., 414 U.S. 291 (1973)	24, 28
---	--------

Books and Articles:

Note, Federal Jurisdiction Over Challenges to State Welfare Programs, 72 Col.L.Rev. 1404 (1972)	14
Note, Federal Judicial Review of State Welfare Practices, 67 Col.L.Rev. 84 (1967)	15
Note, Federal Pendent Subject Matter Jurisdiction 73 Col.L.Rev. 153 (1973)	22
Coiner, Class Actions: Aggregation of Claims for Federal Jurisdiction, 4 Memphis State Univ. L.Rev. 427 (1974)	29
Byse & Fiocca, Section 1361 of the Mandamus and Venue Act of 1962 and Nonstatutory Review of Federal Administrative Action, 81 Harv.L.Rev. 308 (1967)	33, 34, 35
Herzer, Federal Jurisdiction Over Statutorily Based Welfare Claims, 6 Harv. Civ. Rights-Civ. Liber- ties L. Rev. 1 (1970)	16
Fortune, Pendent Jurisdiction—The Problem of 'Pendent Parties', 33 Univ. Pitts. L.Rev. 1 (1972)	22
1 J. Moore, Federal Practice ¶0.142(7) at 140-41 (1973 Supp.)	24
2 J. Moore, Federal Practice ¶4.29 at 84-85 (1973 supp.)	24, 31
Wright, The Law of Federal Courts (2d ed. 1970)	25, 26
Note, Federal Jurisdictional Amount: Determination of the Matter in Controversy, 73 Harv.L.Rev. 1369 (1970)	26
Albert, Standing to Challenge Administrative Ac- tion: An Inadequate Surrogate for Claim for Relief, 83 Yale L.J. 425 (1974)	34

	<i>Page</i>
Jaffe, Judicial Control of Administrative Action 165 (1965)	35
Davis, Administrative Law Treatise, ¶ 23.02 (supp. 1970)	35
W. Haber & M. Murray, Unemployment Insurance in the American Economy: An Historical Review and Analysis (1966)	58, 60, 71
Witte, Development of Unemployment Compensa- tion, 55 Yale L.J. 21 (1945)	58
Note, The Supreme Court, 1972 Term, 87 Harv.L. Rev. 55 (1973)	66
Hart, Forward: The Time Chart of the Justices, 73 Harv.L.Rev. 84 (1959)	13
Shakman, The New Pendent Jurisdiction of the Federal Courts, 20 Stan.L.Rev. 262 (1968)	23
S. Levitan, Programs in Aid of the Poor for the 1970s (1969)	67
<i>Statutes:</i>	
28 U.S.C. Section 1331	2, 8, 24, 27
28 U.S.C. Section 1343(3)	<i>passim</i>
28 U.S.C. Section 1343(4)	<i>passim</i>
28 U.S.C. Section 1361	2, 8, 31
5 U.S.C. Section 702	35
28 U.S.C. Section 2403	8, 19
42 U.S.C. Section 1983	15, 16, 17, 18
42 U.S.C. Section 601	3
42 U.S.C. Section 602(a)(7)	41, 42
42 U.S.C. Section 606	3, 59, 69
42 U.S.C. Section 607(b)(2)(C)(ii)	<i>passim</i>
42 U.S.C. Section 607(b)(1)(C)	42, 49, 50, 55

	<i>Page</i>
42 U.S.C. Section 607(d)(3)(A)	39
42 U.S.C. Section 607(b)(2)(C)(i)	8
33 V.S.A. Section 2701(1)(c)(3)	34

Regulations:

45 C.F.R. Section 233.20(a)(3)(ii)(C)	41, 43
45 C.F.R. Section 233.20(a)(3)(ix)	41
45 C.F.R. Section 233.100(a)(5)(ii)	42, 56
45 C.F.R. Section 233.20(a)	41
45 C.F.R. Section 233.100(a)(3)(v)	42

Miscellaneous:

Memorandum Concerning Average Monthly Payments Under AFDC-UF and Unemployment Insurance	Appendix B
---	------------

Characteristics of the Unemployed Parent Segment of State Programs for Aid to Families with Dependent Children Approved and in Operation Dec. 1, 1966 (Summary)	Appendix A
---	------------

S. Rep. No. 388, 61st Cong. 2d Sess., Pt. 1 at 15 (1910)	17
S. Rep. No. 1830, 85th Cong. 2d Sess., 3-4 (1958)	25
1958 U.S. Code, Congressional and Administrative News pp. 3099, 3101	25
S. Rep. No. 628, 74th Cong., 1st Sess., p. 11 (1935)	43-44, 67
H.R. Rep. No. 544, 90th Cong., 1st Sess. 2 (1967)	4, 47, 52, 53
H.R. Rep. No. 615, 74th Cong., 1st Sess. 16-17 (1935)	58
Handbook of Public Assistance Administration, Part IV	
¶ 3424.2 (1963)	68
¶ 3424.21	68

(xiii)

	<i>Page</i>
S. Fin.Comm.Rep. No. 744, 90th Cong., 1st Sess. at 160 (1967)	4, 47
H. R. Rep. No. 1030, 90th Cong. 1st Sess., 57 (1967)	48
S. Rep. No. 1014, 90th Cong., 2d Sess., 9 (1968)	50

IN THE
Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1820

PAUL R. PHILBROOK, *etc.*,

Appellant,

v.

JEAN GLODGETT, *et al.*,

Appellees.

No. 74-132

CASPAR W. WEINBERGER, SECRETARY OF
HEALTH, EDUCATION AND WELFARE,

Appellant,

v.

JEAN GLODGETT, *et al.*

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

CONSOLIDATED BRIEF OF PLAINTIFF-APPELLEES

QUESTIONS PRESENTED

1. Did the District Court have jurisdiction over the claims against the State of Vermont under 28 U.S.C. §§ 1343(3) and (4)?

2. Is it necessary for resolution of the issues presented by this case that jurisdiction be established over the U. S. Department of Health, Education and Welfare?

3. Does the Court have jurisdiction over the claims against the U. S. Department of Health, Education and Welfare under the Doctrine of pendent jurisdiction, 28 U.S.C. 1331, 28 U.S.C. 1361 or Section 10 of the Administrative Procedure Act?

4. Was the District Court correct in deciding that 42 U.S.C. §607(b)(2)(c)(ii) excludes families from Aid to Needy Families with Children benefits for only those weeks in which an otherwise eligible father actually receives unemployment compensation, and thereby provide the father with the option of rejecting unemployment compensation for which he is qualified in favor of higher ANFC-UF benefits?

5. Should the Court reach the issue of whether 42 U.S.C. §607(b)(2)(c)(ii) violates the Due Process clause of the Fifth Amendment when the issue was briefed and argued in the District Court but the lower court found it unnecessary to decide the issue?

6. Does 42 U.S.C. §607(b)(2)(c)(ii) violate the Due Process Clause of the Fifth Amendment insofar as it establishes two groups of equally needy and dependent children, and deprives one group of higher ANFC benefits solely due to the father's eligibility to receive state unemployment compensation, no matter how small the amount?

STATEMENT OF THE CASE

Subchapter IV (A) of the Social Security Act of 1935, 42 U.S.C. §§601-643, provides for grants to states for Aid and Services to Needy Families with Children. Section 601 of Title 42 authorizes an appropriation for the purpose of enabling the states to furnish financial assistance to needy dependent children and their parents or relatives with whom they are living "to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence *consistent with* the maintenance of continuing parental care and protection, . . .".

Until 1961, benefits under the AFDC program were limited to needy children who had been "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, . . .". 42 U.S.C. §606. In recognition of the fact that the limitation on eligibility for AFDC meant that "unemployed fathers are forced to desert their families in order that their families may receive aid" and that "there is no reason why a hungry child of an unemployed father should not be fed, as well as a child in other unfortunate circumstances,"¹ the federal administration proposed in 1961 that AFDC eligibility be extended to children in intact families who

¹Statement and Testimony of Abraham Ribicoff, Secretary of the U.S. Department of Health, Education and Welfare Hearings on H.R. 3864 and H.R. 3865 before the House Committee on Ways and Means, 87th Cong. 1st Sess. at 95 (1961).

were disadvantaged due to the unemployment of a parent. With some modifications, the Administration proposal became Section 407 of the Social Security Act, 42 U.S.C. §607. That provision gave the states the option of expanding the definition of "dependent child" to include a needy child who has been deprived of parental support or care by reason of the unemployment (as defined by the state) of a parent. Act of May 8, 1961, Pub. L. 87-31, 75 Stat. 75.

Originally enacted for a one year period, Section 407 was extended for five years by the 1962 amendments to the Social Security Act; extended again until June 30, 1968, and finally amended in its entirety and made permanent in 1968.

In the course of amending Section 407 in 1968,² Congress inserted a provision that had the effect of denying federal funds to reimburse states for payments made to families where the unemployed father was also receiving unemployment compensation.³ Section 407(b)(2)(c)(ii) presently provides:

²Congress' primary concern in amending Section 407 was to correct the disparity in eligibility requirements that had resulted from the provision in Section 407 that "unemployment" be defined by the states. Section 407, as amended, empowers the Secretary of Health, Education and Welfare to define "unemployed." See H.R. Report No. 544, 90th Cong. 1st Sess. 108 (1967); S. Report No. 744, 90th Cong. 1st Sess. 160 (1967). See Levy, Lewis and Martin, *Social Welfare and the Individual*, 430-32, Foundation Press (1971). *Macias v. Finch*, 324 F.Supp. 1252, 1256-1257 (N.D. Cal. 1970), *Aff'd sub. nom. Macias v. Richardson*, 400 U.S. 913 (1970).

³As originally enacted, Section 407(b)(2)(C)(ii) provided for the denial of AFDC to any child "if, and for as long as, such child's father—

“(b) The provisions of subsection (a) (the expanded definition of ‘dependent child’) shall be applicable to a State if the State’s plan approved under Section 602 of this title—

* * *

(2) provides—

* * *

(c) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section—

* * *

(ii) with respect to any week for which such child’s father receives unemployment compensation under an unemployment compensation law of a State or of the United States.”

The State of Vermont has implemented the disqualification provision by Welfare Regulation 2331.31 and interprets it to mean that if a father is merely eligible for unemployment compensation, no matter how small the benefit, the family is automatically and totally disqualified from ANFC-UF regardless of need.

This action was initiated by several Vermont families to challenge the constitutionality of the disqualification provision or, in the alternative, to construe it to apply only to the actual receipt of unemployment compensation. In each case, the amount of unemployment compensation available to the family was less than its

“(i) is not currently registered with the public employment offices in the state, or

(ii) receives unemployment compensation under an unemployment compensation law of a State or of the United States.”

Act of Jan. 2, 1968, Pub. L. 90-248, Title II, Sec. 203(a), 81 Stat. 882.

entitlement under the ANFC-UF program.⁴ The suit sought declaratory and injunctive relief against the Secretary of the U. S. Department of Health, Education and Welfare and the Commissioner of the Vermont Department of Social Welfare. Since it sought to enjoin the enforcement of a federal statute and a welfare regulation of statewide application, a three judge court was convened.

The Court sustained plaintiffs' claim that 42 U.S.C. §607(b)(2)(C)(ii) affords the family an option of rejecting unemployment compensation in favor of the higher ANFC-UF benefits, without reaching the claims based on the Fifth and Fourteenth Amendments. The court enjoined the state to advise AFDC applicants of their option to refuse unemployment benefits and directed the Secretary of Health, Education and Welfare to approve Vermont's AFDC program in accordance with the judicial construction of Section 607(b)(2)(C)

⁴The differential in monthly benefits for each family is shown by a chart prepared by HEW for its brief and reproduced here:

	AFDC	UNEMPLOYMENT COMPENSATION
Glodgett	\$239	\$60
Derosia	394	56
Percy	410	172

Plaintiffs submitted a Memorandum Concerning Average Monthly Payments Under AFDC-UF and Unemployment Insurance in the District Court utilizing statistics based on fiscal year 1972. This study showed that the average AFDC-UF payments were greater than average UI payments in 16 of the 25 states participating in the UF program and that 81% of families receiving AFDC-UF lived in those 16 states. These statistics have been revised and appear in this brief as Appendix B.

(ii). In a supplemental Opinion and Order dated December 28, 1973, the Court held that the judgment would operate prospectively for the benefit of all others similarly situated.

On March 1, 1974, acting on a motion filed by the Department of Social Welfare, the court granted a conditional stay of its judgment with respect to similarly situated families. Under the terms of the stay, persons receiving unemployment compensation are permitted to apply for and receive supplemental financial assistance from the Department of Social Welfare so that the total amount of benefits equals the amount they would otherwise receive under ANFC-UF.

SUMMARY OF ARGUMENT

I.

The Department of Health, Education and Welfare takes the position that the merits of the dispute are properly before the court on Vermont's appeal making it unnecessary to resolve the question of pendent party jurisdiction left open in *Moor v. County of Alameda*, 411 U.S. 693. We concur that the complaint states a substantial federal question thus vesting the court with jurisdiction under 28 U.S.C. §1343(3). This gave the court pendent jurisdiction over the argument that the Vermont disqualification regulation conflicts with 42 U.S.C. §607(b)(2)(C)(ii). Plaintiffs argue in the alternative that should the Court find that the constitutional claim was not substantial in light of this Court's summary affirmance of *Burr v. Smith*, 322 F.Supp. 980

(W.D. Wash. 1971), then 28 U.S.C. §1343(3) and (4) provide an independent basis of jurisdiction to allege a violation of the Supremacy Clause.

In the event that the decision of the district court is reversed on the merits, plaintiffs urge the Court to reach the merits of the constitutional argument or at least resolve the jurisdictional issue prior to a remand. Plaintiffs disagree with the Secretary that the jurisdictional issue can be obviated by intervention under 28 U.S.C. §2403, and argue instead that subject matter jurisdiction is conferred by the doctrine of pendent jurisdiction, 28 U.S.C. §1331, 28 U.S.C. §1361 and Section 10 of the Administrative Procedure Act.

II

Plaintiffs urge the Court to apply the rule that a statute should be applied and not interpreted where its language is clear and unambiguous. *Helvering v. City Bank Farmers Trust Co.*, 296 U.S. 85, 89 (1935). The unvarnished language makes clear that Congress intended to prohibit concurrent receipt of both unemployment insurance and ANFC-UF and to permit the father of a family the option of rejecting unemployment compensation in order to secure higher welfare benefits for his children. This gains support from the fact that in Section 607(b)(2)(C)(i), Congress made express reference to persons "qualified to receive" unemployment compensation, demonstrating its awareness of the distinction.

Contrary to the assertions of the defendants, this construction does not produce "extraordinary results"

or results "plainly at variance with the purposes of the Social Security Act." Because the ANEC-UF program is based on need and unemployment compensation on concepts of insurance, there is no inconsistency in providing the father an option between the programs.

Moreover, even if the legislative history is consulted instead of clarifying the statutory language, it creates ambiguity where none existed before. Legislative history that obfuscates clear statutory language will not be given consideration. *Ex parte Collett*, 337 U.S. 55, 61 (1949).

III

Assuming the Court holds that Section 607(b)(2)(C)(ii) does not afford the family an option between the two programs, then the statute creates two classes of children, equally needy and dependent, one of which is denied the state-determined level of sustenance simply because their fathers are eligible for a certain type of income. This classification lacks rational relation to, and frustrates attainment of, the paramount goal of the ANFC program, namely the protection of children.

These children are, in effect, punished, not because of any conduct of their own, but solely because their fathers may receive insurance payments that bear no relation to family needs. *Levy v. Louisiana*, 391 U.S. 68, 72. Treating equally needy persons differently because of this factor is not rational, but arbitrary. *United States Department of Agriculture v. Moreno*, 93 S.Ct. 2821 (1973).

Plaintiffs also urge the Court to reach the constitutional issue even though it was not decided by the district court. The exigencies of the economic recession and the effect on children in families affected by the exclusion require that the issue be resolved as soon as possible.

ARGUMENT

I.

JURISDICTION OVER THE VERMONT DEPARTMENT OF SOCIAL WELFARE

- (a) The district court had subject matter jurisdiction under *Hagans v. Lavine*, 415 U.S. 528, 94 S.Ct. 1372 (1974) over the claim that Vermont Welfare Reg. 2331.31 conflicts with 42 U.S.C. §607(b)(2)(C)(ii)

In *Hagans v. Lavine*, *supra*, the Court held that if a claim of constitutional deprivation is sufficiently substantial to confer jurisdiction under Section 1343(3), the federal courts have pendent jurisdiction to entertain a claim of conflict between federal and state law. 94 S.Ct. at 1378. As in *Hagans*, plaintiffs' amended complaint alleged that Section 607(b)(2)(C)(ii) and the state regulation violate the Fifth and Fourteenth amendments, respectively, or that the Vermont regulation conflicts with the federal enactment. If the primary jurisdiction conferring claim is substantial, *a fortiori*, the court is invested with power to consider the pendent statutory claim.

The standards governing application of the substantiality doctrine were reiterated in *Hagans*, *supra*. After observing that constitutional insubstantiality had been equated with such concepts as "essentially fictitious", "wholly insubstantial", "obviously frivolous", and "obviously without merit", the Court said:

"The limiting words 'wholly' and 'obviously' have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U.S.C. §2281. A claim is insubstantial only if 'its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy.'" 94 S.Ct. at 1379.⁵

Whether the instant case presents a substantial constitutional question as judged by this standard must be assessed in light of this Court's summary affirmance of *Burr v. Smith*, 322 F.Supp. 980 (W.D. Wash. 1971) *aff'd* 404 U.S. 1027 (1972).

In *Burr*, the plaintiffs attacked the state regulation implementing the disqualification provision of Section

⁵In *Hagans* the Court declined to re-examine the question of whether the substantiality doctrine is applicable "as a statement of jurisdictional principles affecting the power of a federal court to adjudicate constitutional claims...". *Id.* at 1379. As in *Hagans*, plaintiffs believe the equal protection claim they advances was "substantial" within the accepted definition.

607(b)(2)(C)(ii) as violating the equal protection clause of the Fourteenth amendment but made no attack on the federal statute itself. The court found a rational basis for the state regulation in the fact that, as it interpreted Section 607(b)(2)(C)(ii), the availability of federal matching funds required inclusion of the disqualification in the state plan. The court's rejection of the equal protection attack turned entirely on its belief that Section 607(b)(2)(C)(ii) required the disqualification of families in which the father received *or was eligible to receive* unemployment benefits. In this case, plaintiffs assert that if Section 607(b)(2)(C)(ii) is interpreted to exclude the latter group, it too is unconstitutional.

In *Burr*, the plaintiffs also argued that the state had an obligation to establish a wholly state funded plan to supplement benefits of unemployed fathers receiving unemployment benefits. The court rejected this equal protection argument and offered several justifications for different treatment. This court, in affirming without opinion, might have agreed that there were rational bases on which to excuse the state from creating and funding its own program. Manifestly, the instant case arises in a different context and *Burr* is not controlling. See *Bethea v. Mason*, 43 U.S.L.W. 2261 (D.Md. Nov. 12, 1974).

Moreover, it is conjectural whether an affirmance by summary action can ever be a basis for a finding of constitutional insubstantiality. *Dillenburg v. Kramer*, 469 F.2d 1222, 1225 (9th Cir. 1972). In *Edelman v. Jordan*, 94 S.Ct. 1347 (1974), Mr. Justice Rehnquist's majority opinion stated:

"[T]hese three summary affirmances obviously are of precedential value in support of the contention that the Eleventh Amendment does not bar the relief awarded by the District Court in this case. Equally obviously they are not of the same precedential value as would be an opinion of this Court treating the question on the merits." 94 S.Ct., at 1359.

A panel of the Second Circuit has since held that this language privileges only the Supreme Court to disregard principles of *stare decisis*. *Doe v. Hodgson*, 500 F.2d 1206, 1207-8 (2d Cir. 1974). But the suggestion that a summary affirmance is not a treatment of the case on the merits⁶ is a clear invitation to the lower federal courts to exercise a measure of discretion. This is underscored by the reference to Mr. Justice Brandeis' dissent in *Burnet v. Coronado Oil and Gas Co.*, 285 U.S. 393, 406-408 (1932), in which he said,

"But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function." *Edelman v. Jordan*, 94 S.Ct. at 1359-60 n.14.

⁶One scholar has estimated that the time spent in a summary affirmance is one half hour. Hart, Forward: The Time Chart of the Justices, 73 Harv.L.Rev. 84, 95 (1959). See generally articles cited in *United States ex rel. Epton v. Nenna*, 318 F.Supp. 809, 906 n.8 (S.D.N.Y. 1970) and *Doe v. Hodgson*, 478 F.2d 537 (2d Cir. 1973), cert. denied 414 U.S. 1096 (1973).

If the lower courts are bound by *stare decisis* to dismiss cases for want of a substantial federal question where a similar case has been summarily affirmed, it is difficult to see how "better reasoning" and the "process of trial and error" will have the opportunity to be tested. The trial courts are the crucibles in which the arguments must be developed.

If, for the reasons stated above, the Court has *power* to decide the pendent claim of statutory conflict, there can be little doubt that it did not abuse its discretion in doing so. *United Mine Workers v. Gibbs*, 383 U.S. 715, 725-26 (1966). Where the claim sought to be appended raises an issue of federal and not state law, considerations of federalism are obviously of no concern. Note, *Federal Jurisdiction over Challenges to State Welfare Programs*, 72 Col.L.Rev. 1404, 1414 (1972).

- (b) If the equal protection claim were held to be insubstantial under *Burr v. Smith, supra*, the court had jurisdiction under 1343(3) and (4) to determine the statutory conflict issue.

Even assuming the equal protection claim could be characterized as insubstantial, the Court had jurisdiction over plaintiffs' Social Security Act claims under 1343(3) and (4).⁷

⁷This issue was exhaustively briefed by the plaintiffs in *Hagans v. Lavine, supra*. In view of the plenary treatment of the subject there, and the apparent agreement among the parties that plaintiffs' complaint raised a substantial constitutional question, this discussion is a compendium.

First, it would appear that an asserted conflict between federal and state law itself deprives the plaintiff of a right secured by the Constitution within the meaning of Section 1343(3); i.e., the right to secure the benefit of the Supremacy Clause. *Connecticut Union of Welfare Employees v. White*, 55 F.R.D. 481, 486 (D.Conn. 1972). See *Townsend v. Swank*, 404 U.S. 282, 286 (1971); *Swift & Co., Inc. v. Wickham*, 382 U.S. 111, 125 (1965). Cf. *Hagans v. Lavine*, 94 S.Ct. 1372, 1377 n.5 (1974).

In any event, Section 1983 affords a remedy, and Section 1343(3) and (4) jurisdiction, over plaintiffs' claim that the Vermont regulation is in conflict with the Social Security Act. See *Hagans v. Lavine*, 94 S.Ct. at 1377 n.5 and authorities cited.

42 U.S.C. §1983 provides for a civil action to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution and laws of the United States. The addition of the words "and laws" in 1875 evidences a clear intent to embrace statutorily-based actions. See *City of Greenwood v. Peacock*, 384 U.S. 808, 829-30 (1966); *Bomar v. Keyes*, 162 F.2d 136, 139 (2d Cir.), *cert. denied*, 332 U.S. 825 (1947). The "right" plaintiffs seek to have vindicated is the right to have their eligibility for ANFC-UF determined and administered in accordance with federal law. *Rosado v. Wyman*, 397 U.S. 397, 427 (1970) (Douglas J. concurring). Note, *Federal Judicial Review of State Welfare Practices*, 67 Col.L.Rev. 84, 110 (1967).

28 U.S.C. §1343(4) provides for jurisdiction over claims brought under "Any Act of Congress providing for the protection of Civil Rights." Section 1983 is an

act which provides for the protection of civil rights by affording the means by which these rights may be vindicated in federal court. *Gomez v. Florida State Employment Service*, 417 F.2d 569 (5th Cir. 1969). Among the civil rights to be protected is the right to receive property in the form of ANFC benefits without unlawful deprivation. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552. In *Moor v. County of Alameda*, 411 U.S. 693 (1973), this Court, in the course of distinguishing Section 1983 from 1988, recognized that the former provision is an act which protects civil rights within the meaning of Section 1343(4).

The major obstacle to a finding of jurisdiction under Section 1343(4) is a reference in the House Report that Section 1343(4) was a "technical amendment" to "conform to amendments made to existing law by the preceding section of the bill." Since the preceding section related to suits for injunctive relief by the Attorney General to prevent violations of 42 U.S.C. §1985, it has been suggested that Section 1343(4) was intended to be the jurisdictional counterpart of Section 1985. Herzer, *Federal Jurisdiction Over Statutorily-Based Welfare Claims*, 6 Harv.Civ.Rights-Civ.Lib.L.Rev. 1, 16-18 (1970).

This argument is unpersuasive. In the first place, the preceding section was not enacted. Thus, unless Congress passed 1343(4) for no reason at all, it must have a broader application. Moreover, the reference in Section 1343(4) to "Any Act of Congress..." protecting civil rights is not limited to any particular substantive provision. In this regard, the broad language of Section 1343(4) must be compared to Sections

1343(1) and (2) where Congress made specific reference to Section 1985.

Finally, in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), this Court held that Section 1343(4) provided jurisdiction for a claim brought under 42 U.S.C. section 1982. If 1343(4) was merely a "technical amendment", it is difficult to see how it could have served as a basis for jurisdiction.

28 U.S.C. Section 1343(3) providing jurisdiction where the right asserted is under any Act of Congress "providing for equal rights," is an alternative basis for jurisdiction in this case. Section 1983 is such an Act.

Originally, substantive and jurisdictional provisions were combined in Section 1 of the 1871 Civil Rights Act. District and Circuit Courts had concurrent jurisdiction over all civil rights cases. The judicial revision of 1874 divided the substantive from jurisdictional sections. The substantive provision of Section 1 became Section 1983 and jurisdiction was vested in the district court under R.S. 563(12) and in the circuit court under 629(16). The district court provision authorized jurisdiction over claims to redress deprivations of "any right secured by any law of the United States." For no apparent reason, the circuit court provision contained the "equal rights" language now found in 1343(3).

With the abolition of the circuit court jurisdiction in 1911, the "equal rights" language was used to describe the jurisdiction of the district courts. The Senate Committee noted that it had "merged" the jurisdiction of the courts without suggesting that it was contracting the district courts' power to hear civil rights cases. S.Rep.No. 388, 61st Cong. 2nd Sess. Pt.1 at 15 (1910).

There is nothing in this history to suggest that Congress intended to fashion a federal remedy which, at least in part, could not be enforced in a federal court. Yet that is the consequence unless Section 1983 itself is regarded as an "Act of Congress providing for equal rights, . . .".

The 1871 Civil Rights Act owed its provenance to an apprehension on the part of the post-bellum Congress that states were not enforcing their laws with an equal hand. *Monroe v. Pape*, 365 U.S. 167, 172-180 (1961). Section 1983 was designed to secure equal treatment of all persons before the law. It was designated "An Act to Enforce the Provisions of the Fourteenth Amendment." As part of the 1871 legislation, it was intended to reach deprivations of federal rights beyond those growing out of racial discrimination. The Court should find jurisdiction under 1343(3) to preserve the primary purpose of the Section to afford a federal forum to private citizens to seek redress for violations of federal rights under color of state law. See *Mitchum v. Foster*, 407 U.S. 225, 239 (1972); *Monroe v. Pape*, *supra*.

II.

SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIM THAT 42 U.S.C. SECTION 607(b)(2)(C)(ii) VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

(a) Introduction

Should the Court hold that the District Court had jurisdiction over the statutory-conflict claim and uphold

its construction of Section 607(b)(2)(C)(ii), it will not be necessary to reach plaintiffs' claim that Section 607(b)(2)(C)(ii) violates the Fifth Amendment.⁸ However, an adverse decision on the merits of the statutory claim will bring the constitutional issue to the fore.

The district court, applying the "rule of necessity," *Mayor of City of Philadelphia v. Educational Equality League*, 94 S.Ct. 1323, 1340-41 (1974) (White J. dissenting), declined to reach the issue of the constitutionality of Section 607(b)(2)(C)(ii). However, it held that it had subject matter jurisdiction to consider that claim against the Secretary of Health, Education and Welfare. *Glodgett v. Betit*, 368 F.Supp. 211, 215 (D.Vt. 1973).

In Section IV(a), post, plaintiffs urge the Court that if it should reverse the judgment of the three-judge court, it should reach and decide the constitutional issue. This would naturally require a decision of the jurisdictional issue.⁹ Even if the Court should determine

⁸In his brief, the Solicitor General has assured the Court that HEW will fully comply with the Court's mandate if the judgment of the three-judge court is affirmed. The absence of the Secretary of HEW as a party has not been deemed crucial even where his interpretation of the Social Security Act has been rejected by the court. *Carver v. Hooker*, 501 F.2d 1244 (1st Cir. 1974); *Francis v. Davidson*, 340 F.Supp. 351, (D.Md.) *aff'd* 409 U.S. 904 (1972).

⁹The Solicitor General suggests that if the case should be remanded, HEW would end the jurisdictional controversy by filing a motion to intervene under Rule 24(a) and 28 U.S.C. Section 2403. But it is not clear that the jurisdictional issue is thereby mooted.

Section 2403 permits intervention in suits "in which the United States, or any agency, officer or employee thereof is not

that the issue should first be dealt with on remand, expediency militates in favor of resolving the jurisdictional question now. There would be little point to re-convening the three judge court to consider difficult constitutional questions if subject matter jurisdiction is lacking. Conservation of judicial time would be served by prompt resolution of the question.

- (b) Assuming the Court finds that the claim against the Vermont Regulation implementing 607(b)(2)(C)(ii) raises a substantial constitutional question, then the District Court had pendent jurisdiction over plaintiffs' claim that 607(b)(2)(C)(ii) violates the Fifth Amendment

The doctrine of pendent jurisdiction is justified by considerations of judicial economy, convenience and fairness to litigants. As defined by the Court in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), federal courts have the power to hear federal and state claims a party." It is true that the presence of a federal officer as a party to the suit does not preclude intervention by the United States, *Katzenbach v. Morgan*, 384 U.S. 641, 646 n.4 (1966), and intervention has been allowed both to the United States and to the official charged with administering the Act whose constitutionality has been drawn in question. *O'Keefe v. New York City Board of Elections*, 246 F.Supp. 978, 981 (S.D.N.Y. 1965). This suggests that the official administering the Act and the "United States" may have different perspectives and that jurisdictional issues concerning the former are not rendered academic by the intervention of the latter. Section 2403 also makes clear that having been made a party, the Secretary himself cannot voluntarily intervene.

in one action if (1) the federal claim is sufficiently substantial to confer subject matter jurisdiction on the court, (2) the federal and state claims derive from a common nucleus of operative fact, and (3) plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding. 383 U.S. at 725. The Court also reaffirmed "that pendent jurisdiction is a doctrine of discretion, not of plaintiff's rights."

As originally conceived, the doctrine extended the Court's power to hear related claims based on state law between the same parties. But it has been clearly established that the doctrine embraces pendent federal claims as well. *Hagans v. Lavine*, 94 S.Ct., *supra*, at 1385 n.14. The question of whether the doctrine permits the addition of a party when there is no independent basis of jurisdiction over him was expressly left undecided in *Moor v. County of Alameda*, 93 S.Ct. 1785, 1797-99 (1973).

The district court held that the Secretary of Health, Education and Welfare was a necessary party to the claim of constitutional deprivation, *Glodgett v. Betit*, 368 F.Supp. *supra*, at 215 n.7; and enjoined him to approve the Vermont plan in accordance with the court's interpretation of Section 607(b)(2)(C)(ii). The validity of the court's action depends upon the cogency of "pendent party" jurisdiction. It is apparent at the outset that assuming the power to "pendent parties" under Act III, Section 2, the court did not abuse its discretion in this case. Unlike *Moor*, *supra*, all the claims sought to be litigated are federal in nature and considerations of economy, convenience and fairness are served by joinder. Pendent jurisdiction is particularly

appropriate in resolving issues raised under the Social Security Act. *Rosado v. Wyman*, 397 U.S. 397, 404 (1970); Note, Federal Pendent Subject Matter Jurisdiction, 73 Col.L.Rev. 153, 165-166 (1973).

In *Moor*, the Court took note of the fact that many courts of appeals have recognized the "existence of judicial power to hear pendent claims involving pendent parties where "the entire action before the court comprises but one constitutional 'case'" as defined in *Gibbs*." 93 S.Ct. at 1797-98. Thus, pendent jurisdiction is a concept of subject matter jurisdiction over claims, not personal jurisdiction over parties. If the claims arise out of a common nucleus of operative fact under *Gibbs*, the fact that the two claims are asserted against different defendants is conceptually irrelevant. Fortune, Pendent Jurisdiction—The Problem of 'Pendent Parties', 33 Univ.Pitts.L.Rev. 1, 2, 5, 12 (1972). The expansion of federal court jurisdiction finds an analogue in the related concept of ancillary jurisdiction, in the context of compulsory counterclaims under Rules 13(a) and (h) and in the context of third-party claims under Rule 14(a). *Astor-Honor, Inc. v. Grossett & Dunlap, Inc.*, 441 F.2d 627, 630 (2d Cir. 1971).

The "subtle and complex question" the Court perceived in *Moor* and referred to by HEW in its brief was pregnant with overtones of federalism since the claim sought to be appended arose under state law. The "far reaching consequences" apprehended are not present here. For, as Judge Holden said,

"To the extent there is any doubt about the propriety of extending 1343(3) jurisdiction over the claim against the federal defendant here, the doubt should be resolved in favor of jurisdiction,

to avoid the anomaly of denial of federal jurisdiction over a suit against a federal officer challenging the constitutionality of a federal statute involving social welfare, an area in which the federal courts have particular expertise. See Friendly, *Federal Jurisdiction: A General View*, 69-70; 121-122; Wright, *Law of Federal Courts* 110; *Aguayo v. Richardson*, 473 F.2d 1090, 1102 (2d Cir. 1973).” *Glodgett v. Betit*, 368 F.Supp. *supra*, at 215 n.7.

In light of the expansive view taken toward federal jurisdiction in *Gibbs* itself, the argument postulated by the County in *Moor* that it offends the notion that federal courts are courts of limited jurisdiction, is unpersuasive, particularly in the context of this case.¹⁰

Since all the claims in this case stem from a “common nucleus of operative fact”, jurisdiction based on the federal claim against the State of Vermont provides a source of jurisdiction over the other constitutional claims raised. *Aguayo v. Richardson*, 473 F.2d 1090, 1102 (2d Cir. 1973), *cert. denied* 414 U.S. 1146 (1974); *Glover v. McMurray*, 361 F.Supp. 235, 241 (S.D.N.Y. 1973), *rev'd. on other grounds*, 487 F.2d 403 (2d Cir. 1973) (primary jurisdictional claim held insubstantial).

Assuming the Court had pendent jurisdiction over the claims asserted against the Secretary of Health.

¹⁰ The arguments advanced by Shakman, the New Pendent Jurisdiction of the Federal Courts, 20 Stan.L.Rev. 262 (1968), to the effect that pendent jurisdiction should not be expanded to its full potential within the definition of “case” in Art. III, Section 2, rests entirely on concerns of federalism. See *Almenares v. Wyman*, 453 F.2d 1075, 1084 n. 12 (2d Cir. 1971) *cert. denied* 405 U.S. 944 (1970).

Education and Welfare, it had personal jurisdiction and venue under 28 U.S.C. Section 1391(e). *Liberation News Service v. Eastland*, 426 F.2d 1379, 1382 n.5 (2d Cir. 1970); *Kletschka v. Driver*, 411 F.2d 436 (2d Cir. 1969); *Kelley v. Metropolitan Co. Board of Education*, 372 F.Supp. 528 (M.D. Tenn. 1973); *Macias v. Finch*, 324 F.Supp. 1252, 1254-55 (N.D. Cal) *aff'd. sub nom. Macias v. Richardson*, 400 U.S. 913 (1970); *Powelton Civic Home Owners Ass'n. v. Dept. of Housing and Urban Development*, 284 F.Supp. 809, 833-834 (E.D.Pa. 1968); and Prof. Jo Desha Lucas' comment in Supplement to 1 J. Moore, Federal Practice ¶0.142(7) at 140-41 (1973 Supp.); 2 J. Moore, Federal Practice, ¶4.29 at 84-85 (1973 Supp.) and cases cited.

- (c) Assuming the primary jurisdiction conferring claim was insubstantial, the Court had subject matter jurisdiction over plaintiffs' claim that 42 U.S.C. Section 602(b)(2)(C)(ii) violates the Fifth Amendment under 28 U.S.C. Section 1331

In its brief,¹¹ the government notes that although the plaintiffs alleged jurisdiction under 28 U.S.C. Section 1331, they conceded that their individual claims did not exceed \$10,000. Asserting that aggregation is barred under *Snyder v. Harris*, 394 U.S. 332 (1969) and *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), the government argues the court is without jurisdiction under 1331. This fails to take into account the "defendants viewpoint" theory and ignores plain-

¹¹Brief of HEW, p. 11, note 2.

tiffs' argument that their claims are "common and undivided", permitting aggregation.

- (i) The jurisdictional amount is satisfied if the amount of the matter in controversy is determined from the defendant's viewpoint

The object of the jurisdictional amount requirement of 1331 is to keep trivial lawsuits out of the federal courts thereby reducing court congestion. S.Rep. No. 1830, 85th Cong. 2d Sess. at 3-4 (1958); 1958 U.S. Code, Cong. and Admin. News pp. 3099, 3101; Wright, *The Law of Federal Courts*, ¶ 32, P. 107 (2d ed. 1970). That interest may be fully served by asking what is actually involved in the case, a common sense approach which would permit viewing the controversy from the viewpoint of either plaintiff or defendant. "[P]articularly where purely injunctive relief is sought, the amount in controversy may be measured by either 'the value of the right sought to be gained by the plaintiff . . . [or] the cost [of enforcing that right] to the defendant.'" *Tatum v. Laird*, 444 F.2d 947, 951 (D.C.Cir. 1971), *rev'd on other grounds*, 408 U.S. 1 (1972). See also *National Welfare Rights Organization v. Weinberger*, 377 F.Supp. 861, 886 (D.D.C. 1974); *Miller v. Standard Fed. Savings & Loan Ass'n.*, 347 F.Supp. 185 (E.D. Mich. 1972).

Although this Court has never squarely decided the question, in *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972), in the course of dismissing an original action, the Court held that the case would satisfy the jurisdictional requirements for an original proceeding in

district court. Mr. Justice Douglas cited authority supporting adoption of a rule which would measure the jurisdictional amount from the point of view of either the plaintiff or defendant. 406 U.S. at 98. *Ronzio v. Denver & R.G.W.R. Co.*, 116 F.2d 604, 606 (10th Cir. 1940); C. Wright, *The Law of Federal Courts* 117-119 (2d ed. 1970); Note, *Federal Jurisdictional Amount: Determination of the Matter in Controversy*, 73 Harv. L.Rev. 1369 (1960).

This suit seeks declaratory and injunctive relief against the Secretary of Health, Education and Welfare in his administration of the ANFC-UF program. It is not possible to grant relief for only one recipient and the result would be the same if only one individual had brought the suit. In any event, the district court made its judgment applicable to all persons similarly situated to the plaintiffs.

Should plaintiffs eventually prevail, the Secretary must approve the plans of all states participating in the ANFC-UF program to permit persons eligible for unemployment insurance to exercise an option for ANFC-UF instead. Furthermore, the Secretary has repeatedly said that if the Court upholds the district court decision, he will administer the statute in accordance with the Court's interpretation. The amount of the matter in controversy is, therefore, the amount of federal funds that will be made available to the states as matching funds for the ANFC-UF program. Viewed from the defendant's standpoint, it is beyond doubt that the amount in controversy exceeds \$10,000.

- (ii) The Court has subject matter jurisdiction over the claims against the Secretary of Health, Education and Welfare under 28 U.S.C. Section 1331 by aggregating the plaintiffs' claims

Section 1331 also provides a source of jurisdiction for plaintiffs' claims against the Secretary if the plaintiffs are permitted to aggregate their claims. In *Troy Bank v. G. A. Whitehead Co.*, 222 U.S. 39 (1911), the Court stated the rule which, to this day, governs when individual claims may be aggregated to meet the jurisdictional amount:

"When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount; but when several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount." 222 U.S. at 40-41.

The plaintiffs herein do not seek a *pro rata* distribution from the Social Security trust fund. Indeed, they could not do so since the Secretary is under no duty to distribute any part of the trust fund directly to them. Should the plaintiffs prevail, the state will have to expend a sum of money which will be reimbursed in part by HEW.¹² Thus, it is not the individual claims of

¹²The case was initially brought on behalf of the named plaintiffs and all others similarly situated. Plaintiffs sought certification as a class action. The court denied this aspect of the relief sought on the ground that plaintiffs had not sought formal certification. Acting on a post-judgment motion of plaintiffs, the

the plaintiffs which are at issue, but the availability of matching funds to reimburse the state. The Secretary, although concerned that the statute might be held unconstitutional, has no interest in the apportionment of the money among the families of the unemployed. Under these circumstances, the plaintiffs are asserting a "common and undivided" interest in the expenditure of the funds in question, and this collective interest is sufficient to meet the jurisdictional test. See, e.g., *Troy Bank v. Whitehead*, 222 U.S. 39 (1911); *Pinel v. Pinel*, 240 U.S. 594 (1916).

Nothing in *Snyder v. Harris*, *supra*, or *Zahn v. International Paper Company*, *supra*, is to the contrary. While the Court in *Snyder* held that separate and distinct claims of class members may not be aggregated to achieve the requisite amount in controversy, the Court re-affirmed the fundamental principle authorizing aggregation where "plaintiffs unite to enforce a single title or right in which they have a common and undivided interest." 394 U.S. at 335. *Zahn* simply extended the holding of *Snyder* to cases in which some of the class members with separate and distinct claims allege damages in excess of the jurisdictional amount.

In *Bass v. Rockefeller*, 331 F.Supp. 945 (S.D.N.Y. 1971) *vacated and cause remanded on other grounds*,

Court held that the decision would inure to the benefit of all families similarly situated. See *Galvan v. Lavine*, 490 F.2d 1255 (2d Cir. 1973). The aggregation doctrine predated the creation of class actions, *Zahn v. International Paper Co.*, 94 S.Ct. at 509, and are not interdependent devices. The defendants have consistently argued that the cost to the State of Vermont and HEW would be greatly in excess of \$10,000.

464 F.2d 1300 (2d Cir. 1971), the court permitted the plaintiffs to aggregate their claims in a suit challenging a New York statute reducing the number of persons eligible for Medicaid which the state sought to implement without prior approval from HEW. After noting that in *Snyder* the Court had instructed the inferior federal courts to apply settled principles of law in determining the matter in controversy, the Court set forth two tests to aid analysis:

"The interest in distribution test indicates that a common and undivided claim exists when "the adversary of the class has no interest in how the claim is to be distributed among the class members (citation omitted). The second test, the essential party test, allows aggregation of class claims when none of the class members could bring suit without directly affecting the rights of his co-parties." 331 F.Supp. at 950.

The Court held those tests were met by the joint interest of the medically needy to proper administration and preservation of the Medicaid funds. See *New Jersey Welfare Rights Organization v. Cahill*, 483 F.2d 723, 725 n.1 (3rd Cir. 1973); *Yanez v. Jones*, 361 F.Supp. 701 (D. Utah 1973); *Bass v. Richardson*, 338 F.Supp. 478, 482 (S.D.N.Y. 1971); *Broenan v. Beaunit Corp.*, 305 F.Supp. 688 (E.D. Wis. 1969) *aff'd* 440 F.2d 1249 (7th Cir. 1970). See generally, Coiner, Class Actions: Aggregation of Claims for Federal Jurisdiction, 4 Memphis State Univ.L.Rev. 427 (1974);

A case of first importance in applying these principles is *Berman v. Narragansett Racing Ass'n, Inc.*, 414 F.2d 311 (1st Cir. 1969) *cert. denied* 396 U.S. 1037 (1970). *Berman*, decided after *Snyder*, concerned a claim by owners of prize winning race horses that

they were entitled to a share of the 'breakage' money, which consisted of the odd cents on a winning ticket. The horse owners claimed that under an agreement with the track, they were to receive a certain percentage of the track's annual share of the purses. The unpaid 'breakage' accumulated over the years, was a sum of several million dollars.

The First Circuit applied the *Pinel* formula and held that the matter in controversy was not the individual claims of the plaintiffs but the recovery of the fund under the alleged agreement. Central to the holding was the fact that there were no contractual rights between the defendants and the individual purse winners.

It was also significant that the plaintiffs had made no specific claims for individual payment. If the plaintiffs were successful in their claim, a distribution formula would have to be established by the court before the members would share individually. By the same token, in the instant case no recovery can be had unless the court declares Section 607(b)(2)(C)(ii) unconstitutional. In that event, the state would have to make disbursements to otherwise eligible families that elected to receive ANFC-UF. HEW would reimburse the state monthly with matching funds. The relief sought from the federal defendant is therefore release of matching funds via reimbursement and not payment of individual claims. This brings the instant case squarely within the *Berman* rationale. As the court said:

"In cases contemplating the distribution of a fund, it has long been settled that one factor of considerable importance on the issue of whether the plaintiffs' interests are aggregable is whether the defendant has an interest in how the fund will

be apportioned if plaintiffs prevail. (cases omitted). Here, the defendants' only obligation would be to see that 44.7% of their share of the 'breakage' is made available to the class. Under any formula that is finally adopted defendants' liability is the same. The interests of the plaintiffs *vis a vis* the matter in controversy are 'common and undivided' and the fact that their interests are separable among themselves is immaterial." (citations omitted) 414 F.2d, *supra*, at 316.

- (d) The District Court had jurisdiction over the plaintiffs' claim that Section 607(b)(2)(C)(ii) is unconstitutional under the Mandamus Statute, 28 U.S.C. Section 1361

The Mandamus and Venue Act of 1962 was intended to remedy the anomaly created by the rule that the district courts, other than in the District of Columbia, lacked jurisdiction to issue mandamus against federal officers. *McIntire v. Wood*, 11 U.S. (7 Cranch) 504 (1873); *Kendall v. U. S. ex rel. Stokes*, 37 U.S. (12 Peters) 524 (1838). See 2 J. Moore, Federal Practice ¶4.29 at 1210-11 (1970).

28 U.S.C. Section 1361 provides:

"Action to compel an officer of the United States to perform his duty—the district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

The key questions in applying the statute are whether there is a "duty owed to the plaintiff" by the federal

defendant and whether the action is "in the nature of mandamus."

Taking the latter question first, it is clear that even under traditional concepts of mandamus, the Secretary has a ministerial duty to approve state plans. 42 U.S.C. Section 602(b).¹³ The real issue is whether it makes a difference that the relief requested is contingent upon a finding that Section 607(b)(2)(C)(ii) is unconstitutional.

² Even under pre-1962 concepts of mandamus jurisdiction, an arbitrary and unconstitutional abuse of power was remedial by mandamus. In *Garfield v. United States ex rel. Goldsby*, 211 U.S. 249 (1908), the plaintiff brought an action for a writ of mandamus against the Secretary of the Interior to compel him to restore him as a member of the Chickasaw Nation which would entitle him to an equal undivided interest in certain land. Plaintiff alleged that he had been enrolled as a member but that his name had been stricken from the rolls without notice and without his knowledge. He alleged that this action was unauthorized, beyond the power of the Secretary and deprived him of valuable rights without due process of law.

The Court held that mandamus is a proper remedy where the federal official has acted wholly without authority of law and discussed at length the constitutional requirements of notice and opportunity to be heard before rights and privileges may be withdrawn. Although the Court held that the Secretary lacked authority to strike previously acquired rights without

¹³42 U.S.C. Section 602(b): "The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, . . .".

notice and hearing, it is clear that the decision has a constitutional dimension. If all the decision stood for was that the Secretary had exceeded his powers under the statute, it would have been superfluous to explore the due process question.

Should the Court determine that the mandatory exclusion provision violates the due process clause of the Fifth Amendment, it is surely within the Court's power to compel the Secretary to perform his ministerial duty to approve the Vermont plan without that condition. *Workman v. Mitchell*, 502 F.2d 1201, 1205-1206 (9th Cir. 1974); *Smith v. McNamara*, 395 F.2d 896 (10th Cir. 1968); *cert. denied*, 394 U.S. 934 (1969); *National Ass'n. of Government Employees v. White*, 418 F.2d 1126 (D.C. Cir. 1969); *Long v. Parker*, 390 F.2d 816 (3rd Cir. 1968); *Walker v. Blackwell*, 360 F.2d 66 (5th Cir. 1966); *Ashe v. McNamara*, 355 F.2d 277 (1st Cir. 1965); *Kelley v. Metropolitan Co. Board of Education*, 372 F.Supp. 528, 539 (M.D.Tenn. 1973); *Cortright v. Resor*, 325 F.Supp. 797 (E.D.N.Y. 1971) *rev'd on other grounds*, 447 F.2d 245 (2d Cir. 1971) *cert. denied* 405 U.S. 965 (1972); *Murray v. Vaughn*, 300 F.Supp. 688 (D.R.I. 1969); *Carey v. Local Board No. 2*, 297 F.Supp. 252 (D.Conn. 1969), *aff'd*, 412 F.2d 71 (2d Cir. 1969).

In any event, the statutory language and the legislative history indicate that the power granted to the federal courts by Section 1361 is broader than the power that had previously existed to issue writs of mandamus. Byse and Fiocca, Section 1361 of the Mandamus and Venue Act of 1962 and 'Nonstatutory' Review of Federal Administrative Action, 81 Harv.L. Rev. 308 (1967).

The second requirement that there be a "duty owed to the plaintiff" is also satisfied. This is essentially a question of standing. Byse & Fiocca, 81 Harv.L.Rev. at 316. As this court said in *Garfield v. United States ex rel. Goldsby*, *supra*, any person who will sustain personal injury by the refusal to perform a plain official duty may have a mandamus. 211 U.S. at 261-262.

Because of the two-tiered statutory pattern of the ANFC program, the immediate effect of a mandamus to the Secretary would be to release matching funds to the state. Nevertheless, the injury resulting from the Secretary's approval of the Vermont plan with the disqualification provision results in direct financial injury to the plaintiffs. Because the ANFC-UF program is only viable as long as federal funding is available, 33 V.S.A. Section 2701(1)(c)(3), the Secretary's approval of the plan is a *sine quo non* to any payments by the state to recipients. The Secretary's action thus has a direct and consequential bearing on the individual recipient.

The plaintiffs do not seek to assert the rights of the state against HEW. Albert, Standing to Challenge Administrative Action: An Inadequate Surrogate for Claim for Relief, 83 Yale L.J. 425, 465-468 (1974). But see *Kelley v. Metropolitan County Board of Education*, 372 F.Supp. 528, 534-535 (M.D.Tenn. 1973). There can be no question that the plaintiffs have suffered economic injury because of the disqualification provision and they are within the zone of interests sought to be protected by 42 U.S.C. Section 607 and the Fifth Amendment. *Ass'n. of Data Processing Service Organizations v. Camp*, 397 U.S. 16 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970).

(e) The Court has jurisdiction under Section 10 of the Administrative Procedure Act, 5 U.S.C. Section 702.

The issue of whether Section 10 of the Administrative Procedure Act confers jurisdiction is a perplexing one. See *Aguiar v. Richardson*, 473 F.2d 1090, 1101-1102 (2d Cir. 1973) *cert. denied* 414 U.S. 1146 (1974). The lack of clarity of the statutory language and the absence of any meaningful discussion in the legislative history mean that the traditional modes of ascertaining legislative intent are unavailing. See Byse & Fiocca, Section 1361 of the Mandamus & Venue Act of 1962 and "Nonstatutory" Judicial Review of Federal Administrative Action, 87 Harv.L.Rev. 308, 326-328 (1967). In this vacuum, policy considerations should govern, and policy favors construing Section 10 as a grant of jurisdiction. Jaffe, *Judicial Control of Administrative Action* 165 (1965); Davis, *Administrative Law Treatise*, Section 23.02 (Supp. 1970); Byse & Fiocca, 81 Harv.L.Rev. at 329-331. By passage of the Mandamus & Venue Act of 1967, Congress evidenced its intent to decentralize nonstatutory judicial reviews by permitting suits to be brought outside the District of Columbia. As Professor Byse points out, construing Section 10 as a jurisdictional grant does not subject any additional administrative action to judicial review, but would permit a litigant to bring his suit in a local federal court thus giving effect to Congress' expressed intent, albeit in a different context. Byse & Fiocca, p. 330-331. This also has the desirable effect of obviating the jurisdictional amount requirement in actions against federal officials. *Id.*

On several occasions, this Court has entertained suits that could only have rested on Section 10. *Shaughnessy v. Pedreiro*, 349 U.S. 48 (1955); *Rusk v. Cort*, 369 U.S. 367 (1962) and *Flast v. Cohen*, 392 U.S. 83 (1968). While these cases did not discuss the issue and therefore cannot be said to be dispositive, they are supportive of the view that sound policy objectives would be served by interpreting Section 10 as a jurisdictional statute.

III.

THE COURT PROPERLY HELD THAT 42 U.S.C. SECTION 607(b)(2)(C)(ii) PROVIDES FAMILIES WITH AN OPTION AND EXCLUDES FAMILIES FROM ANFC-UF BENEFITS FOR ONLY THOSE WEEKS IN WHICH AN OTHERWISE ELIGIBLE FATHER ELECTS TO RECEIVE UNEMPLOYMENT COMPENSATION

- (a) The statutory language is clear, making it unnecessary to explore the purposes of the statute by resorting to the legislative history¹⁴

It is well settled that where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. *Osaka Shoshen Kaisha Line v. United States*, 300 U.S. 98, 101 (1937);

¹⁴Of course, if this Court agrees with plaintiffs' argument set out in Section III(b) that the legislative history is inconclusive, it becomes unnecessary to decide whether it would be improper to consider that history.

Kuehner v. Irving Trust Co., 299 U.S. 445, 449 (1937); *Helvering v. City Bank Farmers Trust Co.*, 296 U.S. 85, 89 (1935); *United States v. Shreveport Grain and Elevator Co.*, 287 U.S. 77 (1932); *Wilbur v. United States, ex rel. Vindicator Consolidated Gold Mining Co.*, 284 U.S. 231, 237 (1931). The District Court held that "It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation." *Glodgett v. Betit*, 368 F.Supp. 211, 217 (D.Vt. 1973). The Court is not confronted, as it was in *Richards v. United States*, 369 U.S. 1, 11 (1962), with an inherently ambiguous phrase such as "law of the place," or with imprecise words such as "restrain or coerce," at issue in "*NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 184 (1967); or language which "does not make clear its intended scope." *Allen v. State Board of Elections*, 393 U.S. 544, 570 (1969).

The Solicitor General relies on *United States v. American Trucking Associations*, 310 U.S. 534 and *Cass v. United States*, 417 U.S. 72, for the proposition that there is no "rule of law" which forbids the Court from turning to extrinsic aids which are clearly relevant to a construction of the words in question. Brief of HEW p. 15.

American Trucking began its discussion by saying that there is no more persuasive evidence of the purpose of a statute than the words chosen by the legislature to make its purpose known. "In such cases," the Court said, "we have followed their plain meaning." It is where the meaning has led to absurd or futile results, or unreasonable ones plainly at variance with

the policy of the legislation as a whole that has taken the Court beyond the literal words. 310 U.S. at 543.

Cass has not wiped out all vestiges of that doctrine. In footnote 5, the Court considered arguments that the statutory language was clarified in other portions of the Act and in other statutes with similar provisions. The Court found that these references did not remove the ambiguity inherent in the statutory language. But the Court made it unmistakeably clear that its perusal of other related statutory sections would precede resort to the legislative history, and that if the language was plain and unambiguous that second step need not be reached.

In *Cass* the Court observed that the controlling consideration is to ascertain what Congress intended. If this can be gleaned from the face of the statute, the language should be given its plain meaning. *United States v. American Trucking Associations*, 310 U.S. at 543, and cases cited note 18. As the Court said in *Helvering v. City Bank Co.*, 296 U.S. at 89, "We are not at liberty to construe language so plain as to need no construction, or to refer to committee reports where there can be no doubt of the meaning of the words used." See also, *United States v. Shreveport Grain and Elevator Co.*, 287 U.S. 77, 83.

The plain meaning of Section 607(b)(2)(C)(ii) is that Congress was concerned that a family could receive *concurrent* payments of unemployment compensation and ANFC-UF. See *Macias v. Finch*, 324 F.Supp. 1252, 1257 (N.D.Cal. 1970). Therefore, it made clear that for any week in which the father *received* unemployment insurance, the family could not also receive ANFC-UF. This left it open to the individual to reject his unemployment benefits if the ANFC was higher.

Internal evidence that Congress was capable of making a distinction between "receipt" of unemployment compensation and "eligibility" for benefits is found in another subsection of the same statute, enacted on the same day as Section 607(b)(2)(C)(ii). Section 607(b)(i)(C) sets forth the qualifications of prior attachment to the labor force required for state participation in the AFDC-UF program. A family will qualify only if the father (1) has six or more quarters of work in any thirteen calendar quarter period ending within a year of applying for ANFC or (2) if he received *or was qualified to receive* unemployment compensation within the meaning of subsection (d)(3) of Section 607. Section 607(d)(3)(A) states that an individual shall be deemed "qualified for unemployment" if "he would have been eligible to receive such unemployment compensation upon filing application . . ."

The failure of Congress to utilize similar language in Section 607(b)(2)(C)(ii) or to incorporate Section (d)(3)(A) by reference suggests that a family was to be excluded from ANFC-UF only for each week in which the father actually received unemployment compensation.

This was a view originally shared by the Department of Health, Education and Welfare.¹⁵ Thus, in footnote two of its initial brief in the District Court, the government unequivocally stated:

"It is the receipt of unemployment benefits and not merely eligibility for such benefits which is the

¹⁵See brief of the Department of Health, Education and Welfare dated August 11, 1972, p. 7 note 2, and p. 17.

operative factor here; Section 607(b)(2)(C)(ii) turns on receipt of unemployment compensation, not eligibility for such benefits."

The Court relied on this statement as accurately reflecting the Government's position. *Glodgett v. Betit*, 368 F.Supp., *supra*, at 217.

HEW seeks to "clarify" its position by arguing that Congress did not refer to (d)(3) because it did not want to penalize the father during the waiting period between application and receipt of unemployment benefits. Brief of HEW, pp. 15-17 n.4. However, (d)(3) would not require that result. Read in conjunction with b(2)(c)(ii), it would make a family ineligible for ANFC for any week in which the father received his unemployment benefit or would have received it had he filed his application. This would have achieved precisely the result which the government claims was intended by Congress.

Moreover, the Secretary argues elsewhere that the phrase "qualified to receive" be read into b(2)(C)(ii). Brief of HEW p. 22. This is inconsistent with his position in footnote 4.

The state takes a different approach. It postulates a *conceptual* distinction between b(2)(C)(i), which limits eligibility to individuals with a prior attachment to the work force, and b(2)(C)(ii) which does not. Since the latter provision has nothing to do with prior work history, the state argues, there was no need to speak in terms of "qualifications" to receive benefits. Brief of State of Vermont, p. 18. This is a *non sequitor*.

The problem with the state's hypothesis is that the definition in d(3) would squarely fit the families it claims Congress intended to exclude: those in which the

father would have been eligible if he filed an application. The state admits this in footnote 11 of its brief.

The state also argues that its interpretation is compelling, "especially in view of the section's traditional interpretation." But traditionally, the section permitted supplementation of unemployment benefits, not total exclusion. Neither logic nor tradition supports the state's argument.

The defendants urge the Court to apply the rule that it will look beyond the words where a literal reading would lead to absurd or futile results or an unreasonable one "plainly at variance with the policy of the legislation as a whole." *Perry v. Commerce Loan Co.*, 383 U.S. 392, 400 (1966). Brief of State of Vermont pp. 11-12. However, the literal reading given the statute by the court produces none of these.

Ensuring a subsistence income for all children made needy due to the unemployment of their fathers can hardly be considered absurd or futile. Nor does the court's construction conflict with the intent of other relevant provisions of the same statutory scheme. The defendants rely on 42 U.S.C. Section 602(a)(7) and its implementing regulations to support their thesis that an irreconcilable conflict results from the court's application of the statute. The conflict said to arise is illusory.

42 U.S.C. Section 607(a)(7) simply instructs the state agency to take income and other resources into consideration in determining the need of applicants for AFDC. But receipt of unemployment compensation works a complete disqualification from the program regardless of need. As the state pointed out in footnote 14 of its Jurisdictional Statement, unemployment

compensation as a resource in *sui generis* in requiring automatic disqualification from AFDC benefits. The key phrase in 607(a)(7) is "in determining need." Defendants would read this language out of the statute.

The reference to the Handbook of Public Assistance Administration on pages 14 and 15 of the state's brief all predate the enactment of Section 607(b)(2)(C)(ii) in 1968. Therefore, it is not surprising that unemployment compensation is referred to as a resource. From 1961 to 1968 it was optional with the states to supplement unemployment compensation with AFDC payments. It must also be remembered that where a family is eligible for ANFC due to the death, continued absence or disability of a parent, unemployment compensation is still considered a resource for determining the amount of the grant.

The superseding regulations in 45 C.F.R. 233.20(a)(3)(ii)(c) and 45 C.F.R. 233.20(a)(3)(ix), cited by the Commissioner, are similarly inapposite. The scope of those regulations is placed in proper perspective by 45 C.F.R. 233.20(a):

"Requirements for State Plans. A State Plan for OAA, AFDC, AB, APTD, or AABD must, as specified below:

(1) *General.* Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where otherwise specifically authorized by Federal Statute."

Since unemployment compensation is statutorily treated differently from other resources in that recipients are

disqualified regardless of need, these regulations do not apply.

The category of Dependent Children of Unemployed Fathers is separately treated in 45 C.F.R. 233.100. Those regulations lend no support to the appellants' position. 45 C.F.R. 233.100(a)(5)(ii) tracks the statutory language in providing for the denial of aid to a dependent child "with respect to any week for which such child's father *receives* unemployment compensation. . .". The regulations also emphasize the difference between the statutory language in Section 607(b)(1)(c) and 607(d)(3) defining the term "qualified for unemployment." 45 C.F.R. 233.100(a)(3)(ii) and 45 C.F.R. 233.100(a)(3)(v).

Finally, the state argues that the District Court's reading of Section 607(b)(2)(c)(ii) produces extraordinary results by (1) shifting the burden of supporting unemployed fathers and their families from employer contributions to welfare aid, and (2) by unjustly enriching employers by reducing their rate of contribution to the unemployment fund over a period of time.¹⁶

But the incidental effects on the unemployment insurance fund are not "extraordinary results" when the differing purposes of the two programs are taken into consideration. "Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed." Report of Senate Finance

¹⁶In its jurisdictional statement, the state also argued that the court's interpretation would encourage "program shopping". Apparently, the state has abandoned this argument.

Committee, No. 628 74th Cong. 1st Sess. p. 11 (1935). As this Court recently said in *California Human Resources Dept. v. Java*, 402 U.S. 121, 130 (1971):

"It is true, as appellants argue, that the unemployment compensation insurance program was not based on need in the sense underlying the various welfare programs that had their genesis in the same period of economic stress a generation ago. A kind of "need" is present in the statutory scheme for insurance, however, to the extent that any "salary replacement" insurance fulfills a need caused by lost employment, the objective of Congress was to provide a substitute for wages lost during a period of unemployment not the fault of the employee."

The Commissioner argues that it was originally the intention of Congress, as revealed in the legislative history of 1935, that unemployment compensation would be the first line of defense for the unemployed, providing a subsistence income without the necessity of resorting to relief. But the state acknowledged in its Jurisdictional Statement that the distinction was "somewhat obscured" in 1961 when Congress expanded the definition of "dependent child" with the express purpose of including the children of the unemployed. Jurisdictional Statement of the State of Vermont, pp. 17-18. The mere fact that in 1935 Congress recognized that unemployment compensation would incidentally benefit many children in the homes of unemployed workers does not mean that in 1968 it would brook a harsh determination against those children.¹⁷

¹⁷Aside from the fact that it is sophistry to speak in terms of "shifting the burden of support" when the purposes of the programs are dissimilar, it should be remembered that not all families who would prefer to exercise the option will automatically qualify for AFDC-UF. For example, the father must meet the eligibility requirements of Section 607(b)(1) and cannot have over \$1800 in resources to be eligible.

Nor would the Court's application of the statute necessarily inure to the economic benefit of employers. Since employers are segregated into rate classes for purposes of determining their contribution rate to the fund, 21 V.S.A. Section 1326(A)(2), their rate would change only if their class changed.¹⁸ Moreover, even if the contribution rate did decline, this cannot be characterized as a "windfall" or "unjust enrichment." It simply means that the employer would not be taxed at as high a rate in the future because his employees were drawing less from the fund.

It is not an "extraordinary result" that Congress should make provision for those families in which the amount of available unemployment compensation falls far below the subsistence level as defined by the State for purposes of its ANFC program. Indeed, it would be extraordinary if some children were deprived of subsistence solely due to their father's eligibility for unemployment compensation.¹⁹

¹⁸Whether or not the employer's class changed would depend on a number of variables including the amount of the employer's benefit ratio, the amount of his annual taxable payroll and its relationship to annual taxable payrolls of other employers. 21 V.S.A. Section 1326(A)(1). The classes are determined by cumulative payroll percentage limits. (Col. B of Table accompanying 21 V.S.A. Section 1326). Absent the right combination of factors, an employer whose taxable payroll is near the ceiling would not have his contribution rate reduced.

¹⁹This result would be particularly irrational in light of the fact that a man who quits his job "voluntarily without good cause attributable to his employer" or who is discharged for misconduct connected with work is disqualified from receiving unemployment compensation for up to twelve weeks. 21 V.S.A. Section 1344. His family will be eligible for the higher ANFC benefits. It is the man who leaves for good cause whose family is penalized. *Francis v. Davidson*, 340 F.Supp. 351 (D.Md.) *aff'd*. 409 U.S. 904 (1972).

It has frequently been said, usually in the context of sustaining legislation against constitutional attack, that there are many constitutionally permissible ways in which Congress may seek to deal with a problem. *Jefferson v. Hackney*, 406 U.S. 535, 546-547 (1972). In 1961, Congress was concerned that fathers were deserting their families so that the remnants would be eligible for ANFC under 42 U.S.C. Section 606. The ANFC-UF program was the outgrowth of that concern. Paradoxically, the defendants' interpretation of 607(b)(2)(C)(ii) would directly undercut that objective. A father eligible for unemployment insurance that is less than the family's ANFC entitlement could desert the family. Not only would the remnant be eligible for ANFC under Section 606, but the father could draw unemployment compensation to support himself during the period of his unemployment. Surely, Congress could not have intended such a catastrophic result.

Where the language of Section 607(b)(2)(C)(ii) is "crystal clear," *Allen v. State Board of Education*, 393 U.S., *supra*, at 570, internally consistent, *Malat v. Riddell*, 383 U.S. 569, and compatible with other provisions of the AFDC program, there is no occasion to depart from the literal meaning of the statutory language. *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, 492 (1947); *Kuehner v. Irving Trust Co.*, *supra*; *Wilbur v. United States, ex rel. Vindicator Consolidated Gold Mining Co.*, *supra*; *Ex Parte Collett*, 337 U.S. 55, 61 (1949).

(b) Assuming the circumstances of this case require resort to the legislative history, that history is at best inconclusive and, in any event, is not at variance with the district court's reading of the statute

It is clear that when Congress created the optional unemployed parent program in 1961, it left it up to the individual states to decide whether AFDC could be used to supplement unemployment compensation.²⁰ This was an early recognition that state unemployment compensation benefits might fall below the level of subsistence. The legislative history since 1967 is unilluminating as to Congress' intention regarding the impact that eligibility for unemployment compensation would have on eligibility for AFDC-UF.

The House Ways and Means Report²¹ simply states that "Under the committee bill, states must exclude from the program anyone who *is receiving* unemployment compensation."

The report of the Senate Finance Committee²² was

²⁰Of the twenty-two states that had the UF program in effect in 1966, only three (Maryland, Arizona and West Virginia) considered receipt of unemployment insurance a bar to eligibility. The other states treated unemployment benefits as a resource in determining need. Characteristics of the Unemployed Parent segment of state programs for Aid to Families with Dependent Children Approved and in Operation, Dec. 1, 1966. Summary reproduced as Appendix A.

²¹H.R. Report No. 544 (accompanying H.R. 12080) 90th Cong. 1st Sess. at 108 (1967).

²²S. Fin. Comm. Resp. No. 744, 90th Cong. 1st Sess. at 160 (1967).

concerned that under the House bill a family was excluded from AFDC for any month in which the father received unemployment compensation.

"The House bill prohibits the payment of assistance (with federal participation) to a family that receives any amount of unemployment compensation during the same month. Since the unemployment compensation may be for only a small part of the month, a family's income could be far below the state's standard of need and still the family would be ineligible for assistance. The committee bill returns to existing law under which the choice "as to whether unemployment compensation payments can be supplemented, is left to the states."

The conference report²³ sheds no light on the matter and, in fact, muddies the waters even more. The report states:

"Unemployed Fathers Under AFDC"

"Amendments Nos. 186, 189, 190, 191, 193 and 195; Section 407 of the Social Security Act, as amended by Section 203(a) of the House Bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to exclude fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid and fathers who receive (or are qualified to receive) any unemployment compensation under state law."

"The Senate amendments removed these exclusions and restored the provisions of the present law under which a state may at its option wholly or partly deny AFDC for any month where the father

²³H.R. Rep. No. 1030, 90th Cong., 1st Sess. 57 (1967).

receives unemployment compensation during the month. (The Senate amendments also removed certain work or training requirements in order to conform with amendment No. 198, and modified the effective date provisions of the House bill).

"The Senate recedes (except on the conforming amendments and effective date provisions)."

The committee was clearly talking about the *eligibility* requirement that the father either have six quarters of work in the previous thirteen calendar quarters or been receiving or qualified to receive unemployment compensation within the year prior to his applying for ANFC, and not the exclusion of families in which the father is currently receiving unemployment compensation. The second paragraph simply describes the amendment offered by the Senate which would have excluded these two eligibility provisions and retained the optional supplement approach of the 1961 legislation. While the syntax is confusing, it is clear that the committee was describing two quite different proposals. This reading is bolstered by the fact that there is nothing in the House report to indicate that families would be excluded if the father is presently eligible for unemployment compensation but refuses to accept it.

The Secretary argues against this interpretation "because the conference report refers to the *exclusion* of fathers who receive (or are qualified to receive) any unemployment compensation." Brief of HEW p. 22. Since Section 607(b)(1)(C) is an inclusionary rule and 607(b)(2)(C)(ii) is an exclusionary rule he argues that the entire report must be referring to the latter.

The Secretary overlooks the fact that in the very same sentence, the report refers to the *exclusion* of

"fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application of aid, . . .". Since this is clearly a requirement of 607(b)(1)(C), it demonstrates the futility of parsing the sentence as the Secretary suggests. The most plausible reading is that the Conference Committee described both elements of 607(b)(1)(C) in the negative, without attaching any substantive importance to it. Significantly, the House Report spoke of *excluding* from the program "those fathers who have not been in the labor force, or whose attachment to the labor force has been casual." H.R.Rep. No. 544, 90th Cong. 1st Sess. 108 (1967).

The State argues that it is significant that the words "or qualified to receive" are enclosed in parentheses, and that this is evidence that the Committee read "receives" to include eligibility. This does not explain why Congress spelled it out in 607(b)(1)(C) and not in 607(b)(2)(C)(ii). Congress obviously saw a distinction, a conclusion which is reinforced by the fact that both sections were enacted on the same day. In any event, this Court has refused to draw any inferences from the appearance of parenthetical clauses in the legislative history which have been elided in the final draft of the legislation. *Gemsco, Inc. v. Walling*, 324 U.S. 244, 263-65 (1945).

Plaintiffs' analysis is furthered by the 1968 conference report:²⁴

"Section 302. *Aid to families with dependent children in case of unemployed fathers receiving unemployment compensation.*

²⁴S. Rep. No. 1014, 90th Cong. 2d Sess. 9 (1968).

Section 302 of the conference substitute corresponds to section 14(c) and (d) of the Senate amendment. Section 14(c) and (d) eliminated the provision (in sec. 407(b)(2)(C) of the Social Security Act) prohibiting the payment of AFDC to a family on the basis of the father's unemployment for any period in which the father receives unemployment compensation under State or Federal law, and substituted a provision (in sec. 407(c)) giving each state the option under the State plan to deny all or any part of the aid otherwise payable under the plan to a family on the basis of the father's unemployment for any month if the father received unemployment compensation under State or Federal law for any week or part of which is included in such month. There was no corresponding provision in the House bill.

"Section 302 of the conference agreement instead modifies section 407(b)(2)(C) of the act to "prohibit the payment of AFDC to a family on the basis of the father's unemployment with respect to any week for which the father receives unemployment compensation under State or Federal law. It is the intention of the conferees that if the father receives unemployment compensation for all the weeks which fall wholly or partly in a month, the family could not under any circumstances receive all AFDC payment for that month; and if the father receives unemployment compensation for one or more but less than all the weeks which fall (wholly or partly) in a month, the family's AFDC payment will be reduced by the percentage of the month represented by such week or weeks (or by the portion of such week or weeks which falls in such month)."

Again, the conference committee speaks solely in terms of the father's "receipt" of unemployment compensation and not his eligibility to receive such benefits.

On pages 22 and 23 of his brief, the Solicitor General refers to a Report of the Senate Finance Committee to support his interpretation of Section 607(b)(2)(C)(ii). However, the language he quotes is merely a heading preceding the names of certain persons who gave testimony before the Senate Committee. This is hardly persuasive of Congress' intention in enacting the disqualification provision.²⁵

The State refers to the H.R.Rep. No. 544, 90th Cong. 1st Sess. 2 (1967), for the proposition that Congress possessed a "firm intent of reducing the AFDC rolls." While it concedes that this portion of the House Report did not have reference to 607(b)(2)(C)(ii), the State argues that Congress could not have intended to permit unemployed fathers to reject their entitlement and join the welfare rolls.

The Committee's discussion of the provision itself leaves no doubt that it could distinguish eligibility for

²⁵These "headings" purport to summarize the testimony of the persons whose names appear under them. The following caveat appears as an Editor's Note:

"Editor's Note.—Due to the voluminous oral and written testimony on H.R. 12080 and related proposals, in order for any summary to be useful, it is necessary to broadly categorize positions of organizations and individuals. In so doing, it should be understood that it is not possible to include all of the qualifications or conditions with which such organizations and/or individuals may have accompanied such position on each issue. Nor is it possible to attempt an interpretation of a stated position. Nevertheless, an objective attempt has been made to present fairly the position of each witness." Brief Summary of Major Recommendations Presented in Oral and Written Statements During Public Hearings before Senate Committee on Finance, on H.R. 12080, 90th Cong., 1st Sess., p. vii (Committee Print 1967).

unemployment benefits from receipt of unemployment benefits.²⁶ Furthermore, an intent to reduce the welfare rolls solely to protect the fisc is an impermissible legislative purpose. *Shapiro v. Thompson*, 394 U.S. 618, 633.

In *United States v. Shreveport Grain and Elevator Co.*, 287 U.S. 77, the Court discussed the role played by Congressional Committee Reports in the interpretation of statutes:

²⁶ "This program was originally conceived as one to provide aid for the children of unemployed fathers. However, some States make families in which the father is working but the mother is unemployed eligible. The bill would not allow such situations. Under the bill, the program could apply only to the children of unemployed fathers. Moreover, it is the intent of your committee to exclude from the program those fathers who have not been in the labor force, or whose attachment to the labor force has been casual. Under the bill, Federal sharing will be limited to cases where the father has had at least six quarters of work in any 13-quarter period ending during the year before application for assistance. A quarter of work is one in which the father had earnings of at least \$50. A quarter of coverage under the social security program would also be a "quarter of work" so that welfare agencies could use the social security earnings record to verify eligibility under this provision. If a father had been eligible for unemployment compensation or would have been eligible if his employment had been covered within the year before applying for assistance the six quarters of work requirement would not have to be met. In addition, it is provided that the father must have been unemployed (as defined by the Secretary) for at least 30 days prior to receipt of assistance. Under the committee bill, States must exclude from the program anyone who is receiving unemployment compensation." H.R. Report No. 544, 90th Cong., 1st Sess. at 108 (1967).

"In proper cases, such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms. *Wisconsin R.R. Comm. v. C., B. & Q. R. Co.*, 257 U.S. 563, 588-589; *Penna. R. Co. v. International Coal Co.*, 230 U.S. 184, 199; *Van Camp & Sons v. American Can Co.*, 278 U.S. 245, 253. Like other extrinsic aids to construction their use is 'to solve, but not to create an ambiguity.' *Hamilton v. Rathbone*, 175 U.S. 414, 421. Or, as stated in *United States v. Hartwell*, 6 Wall. 385, 396, 'If the language be clear it is conclusive. There can be no construction where there is nothing to construe.' The same rule is recognized by the English courts."

The various congressional reports concerning the development of the ANFC-UF program fail to shed light on the issue presented in this case. First, to the extent that they discuss receipt of unemployment compensation, they address a different issue: the problem that arises when a family receives UCC for a fraction of the month.²⁷ Secondly, if the discussions in

²⁷In 1967, Section 607(b)(2)(C)(ii) excluded families from ANFC-UF for any month in which the father received unemployment compensation. Since unemployment compensation is paid on a weekly basis, this meant that if a father's benefits ran out in the first week of the month, he could not get ANFC until the next month. Remarks of Hon. Wilbur Cohen, Undersecretary of HEW, Hearings before S.Comm. on Finance, 90th Cong. 1st Sess. (H.R. 12080) 268-269. The 1968 amendments changed the disqualification from a month to a week.

It is apparent that this is a problem that would affect all recipients of unemployment compensation, no matter how high

these reports may properly be extrapolated, they confuse rather than clarify the issue. To the extent that the reports speak in terms of "receipt" of unemployment compensation, they support a literal reading of 607(b)(2)(C)(ii). The Conference Committee Report, relied on heavily by the defendants, is unilluminating. It cannot be said with certainty whether the phrase "qualified to receive" pertains to 607(b)(1)(c) or (b)(2)(C)(ii). The Committee Print referred to by HEW carries its own admonition that it may not accurately summarize the testimony of the witnesses. These reports do not solve any ambiguity in the statutory language. Instead, they produce uncertainty and obfuscate the clear meaning of 607(b)(2)(C)(ii). The legislative history is at best inconclusive, and does not justify deviating from the plain meaning of the statute. *United States v. Oregon*, 366 U.S. 643, 648 (1961). As this Court said in *Ex Parte Collett*, 337 U.S. 55, 61 (1949):

"The short answer is that there is no need to refer to the legislative history where the statutory language is clear. The plain words and meaning of the statute cannot be overcome by a legislative history which, through strained processes of

their benefit. For example, a father could be drawing weekly unemployment benefits that, when figured on a monthly basis, exceed the state standard of need. Thus, given an option, he would choose to take unemployment benefits over welfare. But if those benefits ran out in the first week of the month, under the 1967 legislation he could not receive welfare for the remainder of the month. This was the problem addressed by Congress in 1968, and not whether the father might elect to forego the unemployment benefits in the first place.

deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.' *Gemsco v. Walling*, 324 U.S. 244, 260 (1945). This canon of construction has received consistent adherence in our decisions." (Note 12 citing cases is omitted).²⁸

(c) Under the circumstances of this case, the interpretation given the statute by HEW is not entitled to special consideration

Defendants argue that since HEW is the federal agency charged with administration of the Social Security Act, deference must be given to its interpretations. Several considerations militate against the application of the rule in this case.

First, this Court has recently said, "the sound principle of according deference to administrative practice normally applies only where the relevant statutory language is unclear or susceptible of differing interpretations." *Shea v. Vialpando*, 416 U.S. 251, 94 S.Ct. 1746, 1754 n. 11 (1974). As pointed out above, the statutory language is clear.

Secondly, HEW's interpretation may be disregarded, particularly where it is at variance with its own regulation's clear language. *Francis v. Davidson*, 340 F.Supp. 351, 365-66 (D.Md.) *aff'd* 409 U.S. 904 (1972). 45 C.F.R. 233.100(a)(5)(ii) tracks the statutory language that it is the "receipt" of unemployment benefits that triggers the disqualification. Moreover,

²⁸The rule is the same for statutory revisions. See *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 45 (1895) cited in *Ex Parte Collett*, *supra*, footnote 12.

during the course of this litigation, HEW has altered its position. Brief of HEW pp. 15-17 n. 4. This in itself is reason to dispense with its views. *DeSylva v. Ballentine*, 351 U.S. 570, 577-78 (1956).

Thirdly, in light of the purposes of the ANFC program, the Secretary has a heavy burden to demonstrate a congressional intention that otherwise eligible children must be excluded. Such exclusions should be *clearly evidenced* from the Social Security Act or its legislative history. *Townsend v. Swank*, 404 U.S. 282, 286 (1971); *Carver v. Hooker*, 501 F.2d 1244, 1248 (1st Cir. 1974); *Doe v. Lukhard*, 363 F.Supp. 823, 828-29 (E.D. Va. 1973) *aff'd* 493 F.2d 54 (4th Cir. 1974); *Alcada v. Burns*, 494 F.2d 743 (8th Cir. 1974); *Carleson v. Remillard*, 406 U.S. 598 (1972).

A final consideration in determining the meaning of 607(b)(2)(C)(ii) is that the construction made by the district court may be necessary to forestall a successful equal protection attack on the statute. *Carver v. Hooker*, 501 F.2d, *supra*, at 1248. This Court has said that "[a]ny doubt must be resolved in favor of [a] construction to avoid the necessity of passing upon the equal protection issue." *Townsend v. Swank*, 404 U.S., *supra*, at 291.

(d) The District Court's interpretation does not conflict with the purposes of the unemployment compensation program

All parties to this case agree that unemployment compensation and ANFC are mutually exclusive programs. We differ on the consequences of that relationship.

There is no question that when unemployment compensation was first created in 1935, it was intended to be the "first line of defense against unemployment". But subsequent developments in the growth of a legislative program may render legislative interests once considered relevant no longer legitimate. *King v. Smith*, 392 U.S. 309, 320-21 (1968). This was the case with the "suitable home provision" of the 1935 Social Security Act. *Id.* at 321-327. The enacting Congress expected the Act to be molded and developed by future legislatures and later congressional pronouncements must be considered indicative of an evolving legislative intention. *Carver v. Hooker*, 501 F.2d at 1246-1247 n.5.; see Comm. on Ways and Means Report, H.R.Rep. No.615, 74th Cong. 1st Sess. 16-17 (1935).

In 1935, the assistance program for needy children did not extend to children of the unemployed. While Congress hoped that some children would be benefitted by the unemployment insurance program, it was emphatically an insurance program unrelated to individual family needs. W. Haber & M. Murray, *Unemployment Insurance in the American Economy: An Historical Review and Analysis* 42 (1966). Witte, *Development of Unemployment Compensation*, 55 *Yale L.J.* 21 (1945).

1961 saw a volte-face with respect to the programs. Recognizing that fathers were deserting their families so that they could be eligible for ANFC, Congress expanded the program to include the children of the unemployed. Congress was also aware that in some instances, unemployment compensation benefits might fall below the level of subsistence as set by the state. Therefore, it permitted the states to supplement

unemployment insurance with ANFC-UF. This refutes the Secretary's claim that "the history of Congress' adjustments of the relationship between AFDC and unemployment compensation demonstrates that Congress intended that AFDC not be available when unemployment compensation can be obtained." Brief of HEW, p. 19.

There is not one word in the legislative history of 1967-1968 that Congress felt the unemployment insurance system was being undercut or that accomplishment of its objectives was jeopardized by supplementation of benefits. In this connection, it is noteworthy that Congress did not alter the treatment of unemployment insurance as a resource where a child is deprived of parental support due to the death, absence or disability of his parent. 42 U.S.C. Section 606.

The Secretary argues that the effect of the District Court's decision is to subsidize unemployed *parents* through the AFDC program. Brief of HEW p. 26. This is simply untrue. Under the categorical assistance program, the parent is the conduit through which funds are channelled to the child. *Cooper v. Laupheimer*, 316 F.Supp. 264, 269 (E.D.Pa. 1970).

The state argues that the court's ruling results in shifting the burden of supporting families of unemployed fathers from unemployment insurance to the AFDC program. This is undoubtedly true for those families where the amount of unemployment benefits falls below the state need standard and the family is otherwise eligible for ANFC. But this is not a compelling argument where one program is based on need and the other on insurance concepts. In fact, by

permitting the family an option, Congress may have been motivated to protect the unemployment insurance system. As one commentator has observed:

"Absence of public assistance for the unemployed in many states and localities brings pressure on the unemployment insurance program to provide for longer and longer duration of benefits and lower eligibility requirements because the unemployed have no other place to turn for income maintenance. Therefore, the integrity of unemployment insurance requires a complementary program of unemployment assistance. This problem becomes particularly acute in times of recession when unemployment becomes prolonged for large numbers of workers."

W. Haber and M. Murray, *Unemployment Insurance in the American Economy: An Historical Review and Analysis* 482 (1966).²⁹

Contrary to the State's argument, the unemployment insurance program is not in danger of duplicating the purpose of ANFC-UF to meet the needs of the children of the unemployed. The statistics compiled by the state and presented in its brief at pages 31 and 32 are misleading. While it is true that average weekly unemployment compensation benefits have increased, these higher payments do not necessarily benefit the

²⁹This is not a hypothetical concern. The Vermont unemployment fund is seriously depleted. Since January, 1974, the Department of Employment Security has borrowed \$8,411,500 from the reserve fund with which to pay benefits. An additional \$2.9 million loan will be credited to Vermont on February 1, 1975. Conversation with Bill Robinson, Director, Unemployment Insurance Division on January 21, 1975.

ANFC-UF population.³⁰ Studies³¹ have shown that AFDC fathers are at the low end of the distribution of male workers in terms of education, jobs and earnings. Based upon a 1973 study conducted by HEW, it may be concluded that unemployment insurance payments are actually declining relative to ANFC-UF for this population.³¹

These statistics serve to point up an important flaw in the defendants' arguments that the disqualification is a reasonable means by which to ensure the growth of the unemployment insurance program. That program is designed for persons of all income levels. There will always be low paying jobs held by persons with marginal abilities and limited education. Congress recognized this in 1961 when it permitted the states to supplement unemployment insurance with ANFC. It is not likely that Congress would have cut these children off without some discussion.

The consequence of the defendants' position is to create two classes of similarly situated children, one deprived of subsistence as determined by the state solely because the father is eligible for unemployment insurance, no matter how small. As the Court said in *Carleson v. Remillard*, *supra*:

"We cannot assume here, anymore than we could in *King v. Smith*, *supra*, that while Congress 'intended to provide programs for the economic security and protection of *all* children,' it also 'intended arbitrarily to leave one class of destitute

³⁰See Memorandum Concerning Average Monthly Payments Under AFDC-UF and Unemployment Insurance, Appendix B of this brief.

³¹See Appendix B, pp. 3-9.

children entirely without meaningful protection.' 392 U.S. at 330"

Carleson v. Remillard 406 U.S. at 604.

IV.

42 U.S.C. SECTION 607(b)(2)(C)(ii), ASSUMING IT CREATES AN AUTOMATIC AND TOTAL DISQUALIFICATION FROM ANFC-UF, IF THE FATHER IS QUALIFIED TO RECEIVE UNEMPLOYMENT COMPENSATION, VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

- (a) The Court should reach and decide the constitutional issue on the merits even though it was not passed upon by the district court

As a consequence of its finding that 607(b)(2)(C)(ii) affords the father an option to reject unemployment benefits, the district court applied the "rule of necessity" and declined to reach the constitutional issues. It is well established, however, that the prevailing party has the right to seek affirmance on any ground which has support in the record. *Dandridge v. Williams*, 397 U.S. 471 n.6 (1970); *United States v. Ballard*, 322 U.S. 78, 88 (1944); *Langnes v. Green*, 282 U.S. 531, 538-39 (1931).

This Court has never articulated any standards by which to determine when it will reach a constitutional argument briefed and argued but not passed upon by the lower court. Adequate presentation to the Supreme

Court is obviously a consideration. *United States v. Ballard*, 322 U.S. at 88; *Aetna Casualty Co. v. Flowers*, 330 U.S. 464, 468 (1947). Surely, the breadth and immediacy of the issue, the number of persons affected and the consequences of a lack of a dispositive ruling taking the realities of the situation into consideration, should be part of that determination. While the informed judgment of the lower courts is desirable, particularly where the issue is of constitutional magnitude, there may be cases which warrant immediate consideration. In *Langnes v. Green*, 282 U.S. *supra*, at 538, the Court indicated that it would reach the issue if there is "good reason to do so." Plaintiffs believe this is such a case.

The country is in the midst of an economic recession. Unemployment is at the highest level in thirteen years. The national rate of unemployment is 7.1% and is expected to rise to 8%. The insured unemployment rate in Vermont soared to 9.2% for the week ending January 14, the highest rate in almost fourteen years. St. Albans, Vermont has an unemployment rate of 17.7%. Six of the eleven areas of the state have insured jobless rates of 11% or higher. The number of persons filing claims for benefits jumped from 14,000 to 15,675 in one week. Resolution of the issue presented to this Court is of critical importance not only to the children in Vermont who will be deprived of a subsistence level of income if the district court is reversed, but also for the thousands of children throughout the country who would be eligible for ANFC but for the disqualification provision.

The Department of Health, Education and Welfare has briefed the constitutional issue presented by this

case not only in the District Court of Vermont but also in a case raising the identical issues in the District of Maryland. *Salamone v. Mason*, Civ.Action No. M-74-656 (D.Md. filed June 25, 1974). Plaintiffs have requested the defendants to brief those issues for this Court.

The Solicitor General asserts that it would be "inappropriate" to reach the constitutional issue and gives the reason that "the claims should be considered by the district court in light of a proper construction of the statute." Whatever benefit the District Court might derive from such a clarification, surely it is overridden by the desperate financial plight faced by the affected families. Plaintiffs respectfully urge the Court to reach and determine those issues without a remand.

- (b) 607(b)(2)(C)(ii) violates the due process clause of the Fifth Amendment because it discriminates against classes of children according to the source of the father's income and not the need of the children

(i) The Standard of Review

It is well settled that equal protection³² challenges

³²Although the Fifth Amendment contains no equal protection clause, discrimination may be so arbitrary and unjustifiable as to violate the due process clause. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). The same test is applied in determining whether a federal statutory classification in the area of social welfare comports with due process as is applied in determining whether a state classification is consistent with the equal protection clause of the Fourteenth Amendment. *United States Dept. of Agriculture v. Moreno*, 93 S.Ct., 2821, 2825 n.5 (1973).

to welfare legislation are to be tested by the "traditional" standard of review. *Dandridge v. Williams*, 398 U.S. 471 (1970). Thus, where the goals sought by a legislative classification are legitimate and the classification adopted is rationally related to the accomplishment of those goals, the legislation will be upheld. *Richardson v. Belcher*, 404 U.S. 78, 81 (1971).

In *United States Dept. of Agr. v. Moreno*, 93 S.Ct. 2821 (1973), the Court applied the "traditional" standard to strike down a provision of the Food Stamp Act that totally excluded otherwise needy households from foodstamps due to the presence of an unrelated person under age sixty in the household. The case is important both for its methodology and its result.

First, the Court found that the exclusion was irrelevant to the Food Stamp Act's stated goals of alleviating malnutrition and stimulating the nation's agricultural economy. The Court then examined the meager legislative history to see whether it might reveal some other purpose that would support the exclusion. It held that an expressed intent to prevent hippie communes from receiving food stamps was an improper governmental purpose.

Lastly, the Court addressed the contention that the exclusion bore a rational relationship to the government's interest in preventing fraud. This justification was also rejected, principally because the Court believed that the practical result of the exclusion would be to penalize the very persons the Act was designed to assist. The Court also found it doubtful that Congress could rationally have intended the provision to protect against abuse when the Act contained provisions aimed specifically at those problems.

It has been suggested that the Court applied a stricter version of the "traditional" equal protection test in *Moreno* than was applied in such cases as *Jefferson v. Hackney*, 406 U.S. 535 (1972), *Richardson v. Belcher*, 404 U.S. 78 (1971) and *Dandridge v. Williams*, *supra*. Note, the Supreme Court, 1972 Term, 87 Harv.L.Rev. 55, 125-133 (1973). Assuming that this is true, it is justified by the fact that unlike the other cases cited, there was no question that the households excluded were equally needy. "[I]t is appropriate for the courts to be more deferential toward legislative decisions about the basic welfare problem of identifying the needy than toward legislative discriminations on the basis of efficiency between those of equal need." 87 Harv.L. Rev. at 132.

Plaintiffs maintain that, assuming the Court did apply a stricter standard of review in *Moreno*, precisely the same considerations are present in the instant case.

(ii) Consideration of the mandatory bar provision within the analytical framework of *USDA v. Moreno*

(A) Statutory purpose

The unemployment compensation program was originally conceived as providing a pool of funds from which workers could receive "partial replacement of lost earnings" during period of unemployment. Like OASDI, unemployment insurance is not an antipoverty program. Eligibility for assistance and the level of benefits are based on past earnings experience and not

on need. The poor often are excluded or receive inadequate benefits.³³

Although unemployment insurance was established along with the other social insurance programs under the Social Security Act of 1935, it is unique. While it fulfills a "need" in the sense that any income during a period of unemployment is better than nothing, *California Department of Human Resources Development v. Java*, 402 U.S. 121(1971), it is not based on "need" as defined in the categorical assistance programs. While it might be possible to sustain life on fourteen dollars per week, it is bound to have adverse consequences for the physical and mental health of the children.

Contrariwise, the AFDC program was designed to provide subsistence to families on the basis of demonstrated need. It is true, as defendants claim, that as originally conceived, the AFDC program was not intended to protect all needy children. A Senate committee report stated that "many of the children included in relief families present no other problem than that of providing work for the breadwinner of the family." S.Rep. No. 628, 74th Cong. 1st Sess. 17 (1935) quoted in *King v. Smith*, 392 U.S. 309, 328 (1968). For twenty-five years, AFDC benefits were unavailable to intact families made needy due to unemployment of the parent. But this was all changed in 1961 when Congress amended the definition of

³³S. Levitan, *Programs in Aid of the Poor for the 1970s*, 39-40 (1969). The amount of benefits are invariably set at one half the average weekly earnings. Haber & Murray, *Unemployment Insurance in the American Economy*, 173 (1966).

"dependent child" to include those in need due to parental unemployment.

When Congress enacted ANFC-UF legislation, its aim was to provide the children with subsistence, not to deal with the problem of unemployment. This is reflected in the Handbook of Public Assistance Administration, in which HEW emphasized that ANFC-UF was not a new federal program to deal with the problem of unemployment, but rather that it "simply extends the definition of 'dependent child' under Title IV of the Social Security Act 'to include a group not previously covered.'" Handbook of Public Assistance Administration, Part IV ¶ 3424.2 (1963). In the course of discussing the definition of unemployment which was to be left up to the individual states, HEW emphatically stated:

"In addition, the extension is clearly *not* a separate 'unemployment relief measure' but is designed to reach children *not otherwise eligible* but needy because a parent is unemployed."

HEW Handbook of Public Assistance Administration ¶ 3424.21 (1963).

Whatever justification may exist for the classification, it cannot be that children are less needy because their fathers secure some income during the period of unemployment. This is demonstrated by the fact that if the father receives a pittance from any source other than unemployment insurance, it is merely subtracted from the assistance grant. The eligibility of the father for unemployment compensation has no rational connection with the need of his children under the assistance program. *King v. Smith*, 392 U.S. 309, 336 (1968) (Douglas J. concurring.) The mandatory bar

provision is subversive of the statutory purpose of providing basic financial protection to needy dependent children, which this Court has recognized as "the paramount goal of AFDC." *King v. Smith*, 392 U.S. at 325.³⁴

(B) Legislative history and other suggested justifications for the bar

One searches the legislative history in vain for any inkling of the reason for the exclusion. The defendants argue that Congress intended that "the number of families on AFDC is to be kept to a minimum." Like the anti-hippie bias in *Moreno*, a statutory provision designed solely to keep families off the welfare rolls is constitutionally impermissible. *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969); *Memorial Hospital v. Maricopa County*, 94 S.Ct. 1076, 1085 (1974).

In *Burr v. Smith*, 322 F.Supp. at 985, the court suggested that "the receipt of insurance benefits to which they have contributed may be better for the

³⁴The subsidiary statutory purposes to strengthen the family unit in which the children are being raised and to help the caretaker achieve maximum self-support and personal independence "consistent with the maintenance of continuing parental care and protection, . . ." are also undercut. First, the exclusion encourages fathers to desert their families to make them eligible under 42 U.S.C. Section 606. Second, assuming it encourages personal independence and self support to force the father to accept inadequate unemployment benefits, this clearly cannot be achieved at the expense of "parental care and protection." 42 U.S.C. Section 601.

morale of unemployed workers than would be dependence upon or even eligibility to receive welfare assistance." But it is plainly irrational to boost the father's morale at the expense of the nutrition and wellbeing of his children. Nor can the exclusion constitute an incentive to work when the law already requires that the individual be registered to accept work at the time he applies for benefits.³⁵ The existence of such a provision casts considerable doubt on the proposition that Congress could rationally have intended to prevent this particular abuse. *United States Department of Agriculture v. Moreno*, 93 S.Ct. at 2827.

No other objective of the unemployment insurance program is advanced by excluding the family from ANFC. Those objectives have been described by the Department of Labor as follows:

"Unemployment insurance is a program—established under Federal and State law—for income maintenance during period (sic) of involuntary unemployment due to lack of work, which provides partial compensation for wage loss as a matter of right, with dignity and dispatch, to eligible individuals. It helps to maintain purchasing power and to stabilize the economy. It helps to prevent the dispersal of the employers' trained work force, the sacrifice of skills, and the breakdown of labor standards during temporary unemployment."

U. S. Dept. of Labor, Bur. of Emp. Sec., Major Objectives of Federal Policy with Respect to the

³⁵42 U.S.C. Section 607(b)(2)(C)(i).

Federal-State Employment Security Program, Gen. Admin. Letter, No. 35, April 25, 1955.³⁶

Whether or not unemployment compensation is supplemented with welfare assistance is irrelevant to the attainment of these objectives.

In the District Court, HEW advanced two rationales for the disqualification. First, it suggested that Congress was motivated by an intent "no longer to mask states' deficiencies in implementing unemployment compensation programs." But, as the government itself has recognized, the purposes of the programs are different.³⁷ Having recognized the dependency of children whose fathers are unemployed, it is irrational to deprive some of them of subsistence to encourage growth of an insurance program never designed for that purpose.

HEW also argued that the disqualification provision may have been inserted so as not to stifle "the independent growth of the compensation programs through the previous practice of letting ANFC funds be

³⁶Quoted in Haber and Murray, Unemployment Insurance in the American Economy 26. The authors comment that the objective of stabilizing employment is "not mentioned much today" and the objective of stabilizing the economy through purchasing power has a "limited but important" effect. *Ibid.* p. 32-32.

³⁷Even those states that provide for dependent's allowances as part of their unemployment compensation program do not do so on a "needs" basis. "The vital difference that still exists between unemployment insurance and relief is that no individual inquiry and determination is made as to whether the claimant actually needs the dependent's benefit in order to house, feed and clothe the dependent." Haber & Murray, Unemployment Insurance in the American Economy, 193.

used as a substitute." But ANFC funds never were used as a "substitute". Under former Section 607, states were permitted to supplement unemployment compensation with ANFC-UF if the former was lower than the state need standard.

Like *Moreno*, the statutory classification results in the total exclusion of one class of equally needy children. Like *Levy v. Louisiana*, 391 U.S. 68 (1968) the children are punished for something over which they have no control. See *King v. Smith, supra*; *Bradford v. Juras*, 331 F.Supp. 167 (D.Or. 1971); *Cooper v. Laupheimer*, 316 F.Supp. 264 (E.D.Pa. 1970). Like *United States Department of Agriculture v. Murry*, 93 S.Ct. 2832 (1973), the mandatory bar provision creates a conclusive presumption that children are less in need solely because their fathers are eligible for unemployment compensation, no matter how small the amount. And like *Anderson v. Burson*, 300 F.Supp. 401 (N.D. Ga. 1968), it discriminates against children solely on the basis of the source of their parent's income. There can be no justification for treating these children differently from other children whose unemployed fathers receive income from other sources such as Social Security, Workman's Compensation, veteran's benefits or contributions from friends. The mandatory bar provision should be struck down under the Due Process Clause of the Fifth Amendment.

No decision of this Court requires a contrary result.

In *Richardson v. Belcher, supra*, the Court upheld a provision of the Social Security Act offsetting federal disability benefits against state workmen's compensation. Under the Act, total state and federal benefits are limited to 80% of the employee's average earnings prior

to the disability. Plaintiffs argued that workmen's compensation was subject to different treatment than other types of disability insurance.

Congress had made findings that in 35 out of 50 states, a typical worker injured and eligible for both federal disability and state compensation received benefits in excess of his take home pay. The offset provision was upheld by the Court on the ground that Congress could be legitimately concerned (1) that the worker's incentive to return to work could be destroyed where his benefits exceeded his take home pay; (2) that this situation impeded rehabilitative efforts of the state program; and (3) that duplication in benefits might lead to the erosion of the workmen's compensation program. However, the Court expressly noted that the new law allowed a supplement to workmen's compensation where the state payments were inadequate.

Three critical factors serve to distinguish the disqualification provision in the instant case from the workmen's compensation offset upheld in *Belcher*. First, offsetting benefits so that an individual does not earn more from his disability than on the job is understandable in terms of a work incentive. Totally excluding a family from ANFC is incomprehensible.³⁸

³⁸The "incentive" to go back to work in this context would be deliberately to deprive the family of enough money to live on. This was hardly the type of incentive the Court was talking about in *Belcher* where the worker was actually encouraged *not* to go back to work because he would earn less money. Or in *Dandridge v. Williams*, 397 U.S. 471, (1970), where the Court noted that "By combining a limit on the recipient's grant with permission to retain money earned, without reduction in the amount of the grant, Maryland provides an incentive to seek gainful employment." *Id.* at 486.

Secondly, in stark contrast to the rich legislative history in *Belcher*, there is nothing to indicate the intent of the legislature in totally excluding plaintiffs' families from ANFC.

Thirdly, workmen's compensation and disability both serve a common purpose—to pay the worker and his dependents substitute earnings during the period of his disability. Unemployment compensation operates on the same principle. But ANFC is designed to provide benefits to the family based on need. Clearly *Belcher* would not rule out supplemental ANFC benefits to augment unemployment compensation to meet the subsistence standard set by Vermont. Nor could it be argued that such payments could lead to the erosion of the unemployment compensation program.

Dandridge v. Williams, *supra*, and *Jefferson v. Hackney*, *supra*, are similarly inapposite. *Dandridge* dealt with relative economic hardships within the ANFC program. The lack of available money forced the state to choose between limiting the "per child" payments for all families, or setting a maximum benefits ceiling for large families. The state chose the latter recognizing the ability of large families to achieve "economies of scale". The mandatory bar provision totally excludes the family from ANFC regardless of size or the amount of the unemployment benefit. The government has never claimed that the exclusion is required to preserve the trust fund or to avoid a reduction in the number of persons benefitted by the Act. *Jimenez v. Weinberger*, 94 S.Ct. 2496, 2500 (1974).

Jefferson v. Hackney recognized the right of the state to make the same kinds or judgments between different categories of public assistance. Thus the court upheld a

system of percentage reductions that favored the aged and infirm over recipients of AFDC. But this was the result of a firm policy decision, rationally based, that the former groups would be least able to cope with the hardships of an inadequate standard of living. No such judgment can be made between children because of their father's eligibility for a certain kind of income.

Lastly, in *Macias v. Finch, supra*, the plaintiffs challenged the federal definition of "unemployment" under which eligibility for ANFC-UF is determined by the number of hours worked rather than the amount of income earned. Plaintiffs claimed that a standard of unemployment which disregarded need was irrational.

The Court held that Congress could legitimately distinguish between the unemployed and underemployed and apply different solutions to the problems of each. The Court found a rational basis for the legislation in congressional efforts to maintain adequate wages for employed people through minimum wage laws and collective bargaining rights.

Marcias is obviously of no application here.

Should the Court find that 607(b)(2)(C)(ii) violates the due process clause of the Fifth Amendment, it should strive to give relief from an invidious imposition of inequalities:

"Where a statute is defective because of under inclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion. Cf. *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239 (1931)." *Welsh v. United States*, 398 U.S. 333, 361 (1970) (Mr. Justice Harlan concurring in the result).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

RICHARD S. KOHN

Box 43

Danville, Vermont

Vermont Legal Aid, Inc.

St. Johnsbury, Vermont

APPENDIX "A"

CHARACTERISTICS OF THE UNEMPLOYED PARENT SEGMENT OF STATE PROGRAMS FOR AID TO FAMILIES WITH DEPENDENT CHILDREN APPROVED AND IN OPERATION DEC. 1, 1966 (SUMMARY)

AID TO FAMILIES WITH DEPENDENT CHILDREN
SPECIAL CHARACTERISTICS RELATING TO UNEMPLOYMENT OF A PARENT

(The general requirements in a State apply also to families in need as a result of the unemployment of a parent. See the description of State Public Assistance Plans: General Provisions - IA report 50. The following table covers only the States' definition of unemployment as of June 30, 1966, which has been sent to the States for their validation of this definition.)

State (21)	Definition of unemployment
Arizona	<p>Applies to the supporting parent (natural or legally adoptive).</p> <p>Unemployed parent--(a) Has had full-time employment for 5 of last 7 years immediately preceding date of application for assistance, i.e., averaging more than 20 hours per week for 40 weeks per year and is now not eligible for unemployment compensation; or (b) has completed training under Vocational Rehabilitation sponsorship, Manpower Development and Training Act of 1962, a project carried on under Title V of the Economic Opportunity Act of 1964; or has completed training in a recognized school; is seeking employment for the first time since completing the training; and is either ineligible to receive unemployment compensation or has exhausted unemployment compensation 30 days prior to date of application. In either case must have been registered with the State Employment Service for a minimum period of 30 days immediately preceding the date of application for assistance.</p> <p><u>Ineligible if dismissed for cause from most recent prior employment. Period of ineligibility is limited to 1 year from date of dismissal.</u></p>
California	<p>Applies to either parent (natural or adoptive); not working at all or employed only part time, i.e., has worked less than 173 hours of paid regular work per month, or less than the number of hours considered full time by the industry for the job (as established by the California State Employment Service (see below for provisions re: Part-time Farm Labor)); is available for and seeking employment, or receiving training essential to future self-support, or is working full time but is incapacitated to degree that he is able to accomplish less on a job than a normal person and is paid on reduced basis.</p>

POOR COPY

Employment at farm labor affording irregular, temporary or intermittent work which provides no assurance of a dependable amount of income shall be presumed to be part-time employment. The presumption that farm work is part-time employment is overcome if: (a) the parent has worked for not less than 173 hours in each of the immediately preceding 3 months, and (b) the employment is expected to continue at or above this level of hours indefinitely beyond the next month.

If father employed full time, deprivation due to unemployment of mother is considered only if she was previously in labor market and/o. has (a) a valid, workable plan for employment or training, (b) satisfactory child care plan, and (c) ability to work and care for family.

State	Definition of unemployment
California (Continued)	<p>No provision relating to receipt of unemployment compensation.</p> <p>Unemployment ends when all of the following conditions are met: (a) the employment is expected to continue; (b) the unemployed parent has worked at least 1 full week, and (c) at least 1 full week's pay has been received before the end of the month.</p> <p>Three months' readjustment period allowable in AFDC upon return of absent or incapacitated parent but does not apply when deprivation due to unemployment of a parent ends.</p>

Colorado

Applies to father or mother or both (natural or adoptive). Must have been unemployed for a period of 30 calendar days from his previously held full-time employment (173 hours per month unless the industry in which employed requires less than 40 hours per week); or has only part-time employment (less than 40 hours per week; eligible if part-time work of both parents combined is less than 40 hours per week); or is new to the labor market and is seeking employment.

Parents are expected to seek employment actively from all sources in the community, including reasonably frequent contacts with Colorado State Employment Service, private employers who employ large numbers of people, and all other possible job openings. Ineligible if employment of parents (combined or individually) is 40 hours per week even if the income received is less than that specified to constitute need.

Eligibility for or receipt of Unemployment Compensation does not affect eligibility except as amount of benefit received constitutes available income in determining need.

Connecticut

Either one or both parents (natural or adoptive), stepparent when natural or adoptive parent is in the home, actively engaged in labor market within 2 years prior to application, now available for employment, employable, and in search of work; on strike and without full-time employment; totally unemployed on date of application or date assistance authorized or partially unemployed (less than 5 days a week and/or 35 hours a week or less than number of hours considered full time by industry for job performed). Unemployable when health conditions, personality limitations or infirmities of age would preclude activities involved in competitive employment. If one parent is not available for employment as defined by State (including "regular full-time school attendance other than planned vocational education under this program"), family may be eligible on basis of unemployment of the other parent.

Must apply for unemployment compensation. Under Connecticut Unemployment Compensation Law strikers are not eligible for benefits.

State**Definition of unemployment****Delaware**

Either parent (natural or adoptive) who are: (a) in the labor market but not currently employed; (b) not in the labor market previously but available and seeking employment; (c) employed part time (working less than 40 hours a week unless the number of hours employed is considered full-time employment by the industry for the job he is in) and are seeking additional or full-time employment. People who are not working because of a labor-management dispute and are actively seeking employment and are registered with the employment service are considered unemployed. Unemployment can apply to 1 parent in a family when the other parent is employed.

Unemployed parent is one who: (a) has not worked for at least 1 week at the time of consideration, was and is able to work and available for work, is looking for work and is currently registered at the State Employment Service, or (b) is employed part time and is able and available to take full-time employment and is seeking additional work.

Hawaii

Either or both parents (natural or adoptive); must be able-bodied, not working or employed only part time (less than 173 hours a month), and available for full-time employment; applications for assistance from strikers or families of strikers accepted on same basis as other applications.

Unemployed workers shall file claims for unemployment insurance with Unemployment Compensation, Bureau Employment Security; amounts received considered as income in determining need.

Eligibility for unemployment compensation does not affect eligibility for AFDC-UP; amounts received are considered as income in determining need.

Illinois

Either parent (natural or adoptive); employable, unemployed or employed only part time, i.e., (1) neither self-employed nor working for an employer and is actively seeking work or is undergoing vocational education or re-training to enable him to obtain gainful employment, or (2) is employed less than 40 hours per week or less than the number of hours considered full time by the industry for the particular job. May include seasonally or self-employed parent, however, depending on his past practice or employment pattern. Includes a parent whose lack of employment is due to a bona fide strike at his place of employment. Unemployment means "absence of employment, or partial employment where earnings are insufficient to meet the needs of the family." Can apply to one parent in a family when the other is employed full time if income and available resources do not meet family needs.

No requirement concerning receipt of unemployment compensation, any amount received from this source would be considered as income in determining need.

State	Definition of unemployment
Kansas	<p>Either or both parents (natural or adoptive); has been employed out currently unemployed; not previously employed out currently seeking work; has only part time and is seeking full-time work; has been self-employed out currently has no work; one parent unemployed and other employed part time and either or both are seeking full-time work. Includes a parent receiving training under Manpower Training Act if otherwise eligible. No requirement regarding receipt of unemployment compensation, any amount received from this source considered as income in determining need.</p> <p><u>Ineligible</u> if either or both parents are (1) fully employed (at least 40 hours a week or number of hours considered full time by industry for job performed) or (2) unemployed because of work stoppage caused by labor dispute at his place of employment or of last employment.</p>

Maryland

Father only (natural or adoptive); has no work at all or is employed only part time, i.e., less than number of hours which is customary for the particular job and for like jobs in the area; is actively seeking work; has current certification by Maryland State Employment Service that it is not possible to place him in a job; or is attending training sessions in order to acquire new skills which are in demand in labor market. Unemployed parent is one who is "able-bodied but without full-time gainful employment." May include a situation where father is unemployed and mother is employed.

Ineligible if receiving unemployment insurance benefits except when the individual receiving it is enrolled in an educational and for training program to learn a new skill needed to have opportunity for employment, acquire a new skill which is in demand in the labor market, or improve an existing skill.

Nebraska

Massachusetts

Either or both parents (natural or adoptive); unemployed or employed only part time. An individual is deemed to be unemployed in any week in which he performed no wage-earning services, or works less than the normal weekly hours for his regular occupation and therefore has insufficient earnings to support his family.

Not eligible for unemployment benefits because they (1) have exhausted such benefits, (2) have not sufficient coverage, or (3) have not worked in covered employment.

Ineligible if parent (a) is receiving unemployment benefits or (b) is unemployed because he was discharged from job for "good cause" or left employment without "good cause."

New York

State**Definition of unemployment****Michigan**

Applies to the parent (natural or adoptive) of at least one of the children in a "family unit"; not applicable to mother or person acting in place of mother if youngest child in eligible group is less than 2 years of age. Not engaged in gainful employment (as defined by State) for more than 32 hours in any one week; employable, i.e., physically and mentally able to take employment, actively seeking work and available for job interviews, referrals, and training opportunities.

Ineligible if, without good cause, the parent left last full-time employment voluntarily or was discharged for misconduct connected with work within 90 days immediately preceding date of application. Agency assumes that parent left work voluntarily if termination of employment was due to a labor dispute in his place "of employment" whereas labor disputes involving a "supplier" of his place of employment does not affect the parents eligibility status.

Unemployment compensation - Must register for Unemployment Compensation, where applicable, with the Michigan Employment Security Commission and report weekly either to draw benefits or protect claim status.

Parent (natural or adoptive), normally the major source of support for the family, with work history showing recent, regular full-time employment; actively seeking employment, has not refused suitable employment or training, has not become unemployed without good cause; currently totally unemployed or working less hours per week than number considered full time in the first or place of employment; has been self-employed but no such work available or available only in limited quantities; participating in training or re-training program, receiving unemployment insurance which does not meet need in accordance with standards of assistance. Ineligible when unemployment results from stoppage of work due to a labor dispute at place of applicant's employment.

Either or both parents (natural or adoptive): formerly employed full time; totally unemployed on date of application or employed less than 5 days per week or less than 35 hours per week; employable; available for employment, and actively seeking full-time employment; must explore through all employment resources in the community the availability of employment.

Must apply for unemployment insurance benefits. If presumptively eligible for or still in receipt of unemployment insurance benefits, parent must report to State Employment Service as required.

State	Definition of Unemployment
Ohio	<p data-bbox="246 277 923 484">Either parent (natural or adoptive): physically and mentally able to work in suitable employment; unemployed or employed only part time, i.e., less than the number of hours considered full time by the industry in which parent is employed, and actively seeking employment. May include family with one parent fully employed if family is in need and the other parent meets requirements.</p> <p data-bbox="246 512 933 587">A parent who is seasonally employed is expected to show valid reason why past practices relating to off or slack periods are not adequate or available.</p> <p data-bbox="246 615 943 718">Unemployment compensation - receipt of benefits does not affect eligibility for aid if financial need exists; amount of benefits is considered in determining amount of assistance payment.</p>
Oklahoma	<p data-bbox="246 771 943 1080">Either parent (natural or adoptive) who is head of the family and principal source of support; either (a) completely without employment, or (b) earning less than \$55.25 monthly and working less than full time; earned at least \$75 in one of past 2 years immediately preceding application or, if entering labor market for the first time during the past 12 months, is principal source of support for the family. Must be available for full-time employment or training. Must be physically and mentally able to work, ready and willing to engage in work which the applicant is qualified to do, and physically able to perform.</p> <p data-bbox="246 1108 943 1240"><u>Ineligible</u> if parent left his last work voluntarily without good cause connected with his work, or was discharged for misconduct connected with his work, or left his work as a participant in a strike against the employer.</p> <p data-bbox="246 1268 902 1315"><u>Unemployment Compensation:</u> Must have exhausted or be ineligible for unemployment insurance.</p> <p data-bbox="246 1343 928 1446">The social worker in the Division of Family Services will make the determination of eligibility from the standpoint of unemployment and notify the county department of the decision.</p> <p data-bbox="246 1474 954 1654"><u>Title V--EON:</u> In counties having work training and experience projects under Title V of Economic Opportunity Act in operation, more liberal eligibility requirements apply: waive requirement that unemployed parent be "head of the family"; waive requirements on current monthly earnings and amount earned in preceding 2 years; waive requirements that person en-</p>

tering labor market be "principal source of support for the family"; and permit person to be available for part-time employment as well as training. Also permits receipt of unemployment compensation if such benefits do not meet his total need. Factor of unemployment eligibility may be determined locally without prior referral to State office.

State	Definition of unemployment
Oregon	<p data-bbox="358 464 967 732">Either parent (natural or adoptive) able to work and seeking work whether or not he has ever been employed; able to work but receiving training considered essential to future support of his dependents; unemployed, i.e., less than 40 hours per month (40 hours in any week) unless the normal work week for the industry for which he is employed is less than 40 hours per week. <u>Unemployment</u> does not exist if 1) the parent has employment for the same number of hours as other persons working in same kind of work, or 2) the parent chooses to work less than 40 hours per week when he can work 40 hours.</p> <p data-bbox="358 756 956 821">Eligibility continues if an unemployed parent becomes incapacitated but is expected (according to medical evidence) to be able to work within 3 months.</p> <p data-bbox="358 846 945 911">Receipt of unemployment compensation does not affect eligibility if there is financial need, according to State Standards of assistance.</p>
Pennsylvania	<p data-bbox="358 959 956 1179">Either parent (natural or adoptive); must be employable, unemployed or is working only part time, i.e., less than 40 hours per week or work at less than the standard number of hours per week for the type of employment. May include family with one parent fully employed if the other is an employable person who is not employed or is employed only part time. <u>Employability</u> determined on individual basis, considering capacity, suitability or acceptability in the existing labor market.</p> <p data-bbox="358 1203 972 1292"><u>Unemployment compensation:</u> Receipt of unemployment compensation does not affect eligibility except that amount received is considered as income in determining need.</p>
Rhode Island	<p data-bbox="358 1341 972 1537">Either parent (natural or adoptive); unemployed or working part time (less than 40 hours a week or the number of hours considered full time by the industry for the job); has a potential for full-time employment; is actively seeking work, and is available for education or job training or both. <u>Ineligible</u> if the one parent available for work is employed full time even though earnings are less than needed to support family. <u>Includes</u> persons who have been self-employed.</p>

Receipt of unemployment compensation does not affect eligibility except that amount received is considered as income in determining need.

Utah

Both parents; formerly in labor market but not currently employed, not previously in labor market but seeking work, or currently employed only part time (less than 30 hours per week). If both parents employed part time, combined hours of work must be less than 30 hours per week. Unemployment means primary wage earner has lost his employment in any employment activity in which he has customarily been engaged on a full-time basis (30 or more hours per week).

Receipt of unemployment compensation does not affect eligibility except that amount received is considered as income in determining need.

State

Definition of unemployment

Washington

Either or both parents (natural or adoptive), employable but not working full time for an employer, i.e., less than the same number of hours as another person working in same work classification or less than 40 hours per week; absent from work because of industrial disputes, weather, or lay-off; financial need must be expected to last for more than 2 weeks from date of application.

May apply to one-parent family if absent parent is unemployed and only temporarily absent while looking for work, intending to return.

Unemployment compensation: Must apply for unemployment compensation including written verification of current unemployment compensation status.

West Virginia

Either parent; employable but unemployed. Unemployed parent is one who (1) has never been employed or self-employed, (2) has not been employed full time or self-employed during effective month of approval, (3) is not working full time, i.e., 160 hours a month, or the number of hours considered to be full time by the industry for the particular job, (4) is actively seeking work, and (5) has not refused a bona fide offer of employment or voluntarily quit a full-time job or self-employment within the past 3 months. (Self-employed person may be considered unemployed if he has disposed of business equipment, retaining simple tools of a trade that would enable him to secure full or part-time employment in future.)

Ineligible if discharged for good cause from last job unless the cause was physical or mental inability to do the job.

Verification from last employer or potential employer is required to determine employment status.

All provisions can apply to either parent, but employability of the mother not considered an eligibility factor if her employment would prevent the father from going to work or actively seeking work.

Unemployment compensation: Is not receiving or is not eligible to receive unemployment compensation. Must apply for unemployment compensation benefits if eligible for them. Not applicable to parents who (1) were self-employed, (2) have worked primarily in agriculture, (3) are domestics, or (4) were employed by State and local governmental units since they are not eligible for such benefits.

APPENDIX "B"

**MEMORANDUM CONCERNING AVERAGE
MONTHLY PAYMENTS UNDER AFDC-UF
AND UNEMPLOYMENT INSURANCE**

MEMORANDUM CONCERNING AVERAGE MONTHLY PAYMENTS UNDER AFDC-UF AND UNEMPLOYMENT INSURANCE

Since 1972, the Unemployment Insurance Program has changed in a number of states, effectively raising the maximum and average payments to levels that now exceed average AFDC-UF benefits, in 14 of the 25 states which have both programs (see Table 1). These 14 states represent 57.6 percent of the total number of AFDC-UF families, while the other 11 represent 42.4 percent. (In FY 1972, these percentages were 19 and 81 percent, respectively.)

During this period, the gap between maximum and average UI payments has decreased in most states and the percentage of claimants eligible for the maximum has increased (see Appendix A).

Additionally, since 1972, in several states a larger number of higher income workers are unemployed than previously. All of these factors have contributed to higher average payments and to relatively more payments at the higher end of the UI payment scale. Likewise, the use of UI average payments to discuss payments to a low income population (such as AFDC-UF recipients) raises a serious question of validity. Particularly, average and maximum UI payment levels are probably not valid bases for the statement in the Departmental brief concerning men qualified for benefits under both UI and AFDC: "... it appears that males in this category can expect to receive at least as much, if not more, from unemployment compensation than from the AFDC-UF program."

TABLE 1

**COMPARISON OF AVERAGE MONTHLY PAYMENTS UNDER UNEMPLOYMENT
INSURANCE AND UNDER AID TO FAMILIES WITH DEPENDENT
CHILDREN—UNEMPLOYED FATHER SEGMENT, FISCAL YEAR 1974^a**

	Monthly Family Payments AFDC-UF ^b	Monthly Payments Unemployment Insurance ^c	Amount AFDC-UF Payment Exceeds UI Payment (Col. 1 minus Col. 2)
California	262.03	266.04	- 4.01
Colorado	266.39	307.52	- 41.13
Delaware	158.47	293.66	- 135.19
D.C.	190.05	350.12	- 160.07
Hawaii	355.78	306.04	+ 49.74
Illinois	321.16	278.76	+ 42.40
Iowa	327.17 ^d	272.57	+ 54.60
Kansas	249.24	260.19	- 10.95
Maryland	212.33	266.51	- 54.18
Massachusetts	335.96	290.02	+ 45.94
Michigan	348.24	269.37	+ 78.87
Minnesota	331.87	279.28	+ 52.59
Missouri	148.15 ^e	238.24	- 90.09
Nebraska	229.90	245.68	- 15.78
New York	372.62	266.55	+106.07
Ohio	212.29	295.91	- 83.62
Oklahoma	231.22	196.45	+ 34.77
Oregon	267.12	238.11	+ 29.01
Pennsylvania	269.92	307.43	- 37.51
Rhode Island	279.82	275.69	+ 4.13
Utah	264.44	264.78	- .34
Vermont	317.84	266.42	+ 51.42
Washington	283.52	274.91	+ 8.61
West Virginia	217.94	199.53	+ 18.41
Wisconsin	364.15	297.99	+ 66.16
Weighted average ^f	285.70	274.59	-

^aOnly those states with both programs are included.

^bCompiled from monthly *Public Assistance Statistics*, Report Series A-2, USDHEW, National Center for Social Statistics.

^cUnpublished data supplied by State Employment Security Agencies to U.S. Department of Labor, Manpower Administration.

^dData represent six months, January-June, 1974.

^eData represent nine months, October 1973-June 1974.

^fU.S. Average represents the twenty-five states shown.

Average payments reflect benefits paid to a substantial number of unemployed persons who are not eligible for AFDC-UF by virtue of their family wealth, many of whom receive the maximum allowable UI benefits, creating an inflated average for the population of concern here. The inclusion of these beneficiaries in the computation of an indicator for payment levels to beneficiaries also eligible for AFDC-UF is invalid.

Who, then, are these fathers that are dually eligible? A person eligible for both UI and AFDC-UF is a family head, with two or more dependents, who prior to applying for AFDC-UF worked in insured employment. At the time he lost his job his income had been high enough to meet the minimum requirements under UI (at least \$600 during the previous year in Vermont), yet his assets and other resources are meager enough to meet the AFDC-UF resource limitations. For example, in Vermont, a family can own its own home¹ (though less than ten percent of AFDC recipients do), have up to \$1,800 in other real and personal property, liquid reserves, cash or savings, a life insurance policy with a face value not greater than \$1,100, an automobile, and \$1,500 worth of tools, equipment, and livestock. (Other states have similar limitations. See Appendix B for a state by state listing.) This is not a well-off family.

In their 1973 nationwide study of AFDC families, the U.S. Department of Health, Education and Welfare

¹At low income levels, home equity is so small that for only seven percent of poor persons would family income rise above the poverty line if this resource were liquidated over five years. Federal Reserve Board, *Survey of Financial Characteristics of Consumers*, August 1966, p. 39.

found that 60.1 percent of unemployed male family heads¹ worked in blue collar jobs. Nearly 48 percent were in the lowest-paying occupations—as laborers or clerical or private household workers.² Over 44 percent had not completed the eighth grade and two-thirds had not finished high school.³ (See Appendix C for state by state numbers on each of these characteristics.)

Although nearly half of the employed fathers worked full time, their earnings were strikingly low: nearly three-quarters earned incomes below the poverty line for a family of four (\$4,300 in 1973). Monthly and equivalent annual incomes are shown in Table 2 below.

¹About 80 percent of these men were AFDC-UF recipients.

²USDHEW, National Center for Social Statistics, *Findings of the 1973 Study Part I Demographic and Program Characteristics*, 1974, pp. 78 and 79.

³*Ibid.*, p. 72. About 45.8 percent are black, 13.4 percent of Spanish origin or descent, 1.1 percent American Indian, and 38.0 percent other/white. *Ibid.*, p. 25.

TABLE 2

**MONTHLY EARNED INCOME OF AFDC
FATHERS, JANUARY 1973^a**

Monthly income	Percent of fathers
\$1-24	7.0
25-49	6.9
50-74	6.1
75-99	7.2
100-149	15.2
150-199	7.8
200-249	5.8
250-299	5.6
300-399	10.9 ← U.S. poverty line-
400-499	12.7 family of 4 (\$4,550)
500 and over	14.7
	<u>100.0</u>

Source: USDHEW, National Center for Social Statistics, *Findings of the 1973 AFDC Study Part II—Financial Circumstances*, p. 58.

^aAbout 80 percent of these fathers are AFDC-UF recipients.

All of these characteristics indicate that AFDC fathers are at the low end of the distribution of male workers, in terms of education, jobs, and earnings. Any comparison of their UI benefits with benefits of workers for AFDC at the least must only include UI beneficiaries in comparable income groups.

In the same study, DHEW asked respondents whether they had received benefits under Unemployment Insurance during the survey period and, if so, how much. (Unemployed fathers who had transferred from one program to the other would answer positively; no state permits receipt of both program benefits simultaneously.) These unemployed fathers, all of whom were currently recipients of AFDC-UF, reported median monthly UI payments of \$150.00,¹ about 57.7 percent of the average Unemployment Insurance payments nationwide of \$256.12 that month (see Table 3). At the same time, the median AFDC-UF payment was \$272.87,² \$125 above the UI payment. The distribution of payments under both programs is shown in Table 3 and in Chart 1.

This disparity was not unique to 1973. In their earlier biennial surveys in 1967, 1969, and 1971, DHEW found that AFDC recipients who had recently received UI payments received UI amounts equal to 64.2 percent, 71.7 percent, and 73.5 percent of the AFDC payments they later received (see Table 4). UI payments are *declining* relative to AFDC-UF payments for this population.

¹USDHEW, National Center for Social Statistics, unpublished information from the 1973 Survey. The average (which is not available yet) would be slightly higher than the median.

²*Op cit.*, 1973 Survey, unpublished data.

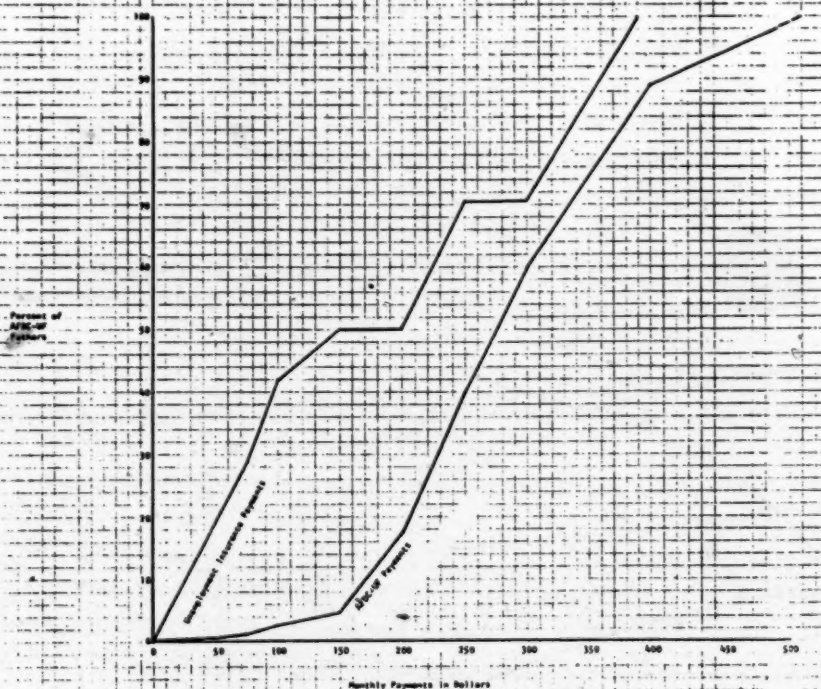
TABLE 3

**AFDC-UF AND UNEMPLOYMENT INSURANCE
PAYMENTS TO AFDC-UF BENEFICIARIES,
JANUARY 1974, NATIONWIDE**

Monthly Payments	Percentage of Families	
	AFDC-UH	Unemployment Insurance
\$1-498	0
50-747	28.6
75-99	1.3	14.3
100-149	2.6	7.1
150-199	12.3	0
200-249	22.6	21.4
250-299	19.3	0
300-399	29.6	28.6
400-499	8.8	0
500 and over	2.0	
	<hr/>	<hr/>
	100.0	100.0
	(N=119,795)	(N=11,812)

Source: USDHEW, National Center for Social Statistics, unpublished findings from the 1973 AFDC Study.

CHART 1
COMPARISON OF AFSC-OF PAYMENTS WITH DD PAYMENTS
TO MONTHLY ELIGIBLE FATHERS, 1973



Source: USMNH, MCS, unpublished information from 1973 AFSC Survey.

CO

M
a
Y

January

January

January

January

^aUSD

Data By

August,

^bTele

(Taken f

^cUSD

January

^dUSD

Report M

^eSee^fOp a^gUSD

1971, T

^hSeeⁱOp c^jRepr

the 1973

^kSee^lOp c

to the fi

TABLE 4

COMPARISON OF UI PAYMENTS TO AFDC-UF RECIPIENTS WITH UI
PAYMENTS TO ALL RECIPIENTS AND AFDC-UF PAYMENTS
JANUARY 1973

Month and Year	Unemployment Insurance Payments to Subsequent AFDC-UF Recipients			UI Payments Nationwide (to all Recipients)	AFDC-UF Payments
	Payments	Percentage of Average AFDC-UF Payments	Percentage of Average UI Pay- ments		
January 1967	\$133.80 ^a	64.2	74.05	180.69 ^b	208.55 ^c
January 1969	171.53 ^d	71.7	85.8	199.87 ^e	239.10 ^f
January 1971	178.66 ^g	73.5	76.3	234.07 ^h	243.00 ⁱ
January 1973	147.83 ^k	54.2	57.7	256.12 ^k	272.87 ^l

^aUSDHEW, National Center for Social Statistics, *Findings of the 1967 AFDC Study: Data By State and Census Division, Pt. II, Financial Circumstances*, Report AFDC-4 (67), August, 1970, Table 99.

^bTelephone interview, USDOL, Manpower Administration official, December 20, 1974. Taken from *Unemployment Insurance Statistics*, Manpower Administration.)

^cUSDHEW, National Center for Social Statistics, *Unemployed Parent Segment of AFDC, January 1967, 1967*.

^dUSDHEW, NCSS, *Selected Statistics Data on Families Aided and Program Operations*, Report NCSS-4 (71), June 1971, Table 61.

^eSee footnote^b.

^fOp cit., *Public Assistance Statistics*, January 1969, Table 8.

^gUSDHEW, NCSS, *Findings of the 1971 AFDC Study Part II, Financial Circumstances*, 71, Table 56.

^hSee footnote^b.

ⁱOp cit., *Public Assistance Statistics*, January 1971, Table 8.

^jRepresents the median, probably lower than the average. Unpublished information from 1973 AFDC Study, USDHEW, NCSS.

^kSee footnote^b.

^lOp cit., *Public Assistance Statistics*, January 1971, Table 8. (This figure is nearly identical to the finding of the January 1973 AFDC Survey.)

Their UI payments in these earlier years were also considerably below the national average UI payments at the time. In the three years, their UI payments were 74.05 percent, 85.8 percent, and 76.3 percent of national averages (see Table 4).

There is little reason to believe that the distribution of payments has altered much since January 1973. In the interim, average AFDC-UF and average UI payments have increased nationwide about \$29 and \$26 per month, respectively. Under UI, the percentage of average wages paid in benefits has increased slightly, and in most states the percentage of claimants eligible for the maximum has increased (see Appendix A). But these factors have little effect on recipients at the lower wage levels. AFDC-UF income and resource limitations have not changed in most states since 1973,¹ effectively limiting eligibility to an even lower-income segment of the population, as incomes rise in general. Consequently, AFDC-UF eligible families may now receive UI benefits even further below the rising UI average than in 1973.

Respectfully submitted,

SUSAN SMITH
Legal Action Support Project
Bureau of Social Science Research, Inc.
1990 M Street, N.W., Washington, D.C. 20036

¹ Telephone interview USDHEW, Assistance Payments Administration official, December 19, 1974.

Appendix A

**PERCENTAGE OF UNEMPLOYMENT INSURANCE
CLAIMANTS ENTITLED TO MAXIMUM WEEKLY
BENEFITS
(In Percentages)**

State	January-March 1972	January-March 1974
Michigan	72.2	80.6
Ohio	71.5	57.0
Iowa	70.2	67.6
Nebraska	64.9	60.7
Missouri	59.1	55.2
Washington	58.7	37.8
Kansas	58.1	52.5
Minnesota	57.4	58.5
Delaware	54.2	46.1
Oregon	51.3	50.8
Vermont	48.0	46.9
Massachusetts	47.4	41.0
Illinois	45.9	65.8
New York	43.9	50.4
Wisconsin	42.6	20.0
Maryland	41.1	45.5
Hawaii	37.5	27.2
Oklahoma	35.8	41.3
Utah	34.9	37.1
California	34.5	28.1
Rhode Island	^b	32.4
Pennsylvania	32.8	30.0
District of Columbia	26.8	32.1
Colorado	20.5	56.4
West Virginia	19.6	10.1

^aU.S. Department of Labor, Manpower Administration, Unemployment Insurance Statistics, January-March 1972 and January-March 1974.

^bData not available.

Appendix B

Property and Income Limitations under AFDC

Source: USDHEW, NCSS *Characteristics of State Public Assistance Plans under the Social Security Act*. Public Assistance Report No. 50 1973.

Item: 7. Property and Income
Limitations

Program: AFDC

No. of Programs: 54

COMPILATIONS BASED ON CHARACTERISTICS OF STATE PUBLIC
ASSISTANCE PLANS: GENERAL PROVISIONS IN EFFECT JANUARY 31, 1973

Property and Income Limitations in Determining Eligibility

Federal requirement: One of the conditions for approval of State Public Assistance Plans and for Federal financial participation in Aid to Families with Dependent Children is that the State Plan must provide for consideration, in determination of the need of a claimant of assistance, of any income and resources that he may have. The provisions tabulated below do not include the permissible or the required disregarding of certain earned or other income.

I. Provisions on Ownership of Property Used as Home 1/

Makes no separate evaluation of home; includes it
in total of both real and personal property.....1 State

Missouri

Evaluates home with all real property, usually against
a maximum applied only to real property.....1 States

California

Minnesota

New York

Tennessee

Evaluates home separately against a maximum applied
only to the home property.....11 States

Alabama

Connecticut

Kansas

Oklahoma

Arizona

Guam

Mississippi

Wyoming

Arkansas

Hawaii

Montana

Considers home separately but specifies no
maximum for home property.....38 States

Alaska

Kentucky

New Mexico

South Dakota

Colorado

Louisiana

North Carolina

Texas

Delaware

Maine

North Dakota

Utah

D. C. x

Maryland

Ohio

Vermont

Florida

Massachusetts

Oregon

Virgin Islands

Georgia

Michigan x

Pennsylvania

Virginia

Idaho

Nevada

Puerto Rico

Washington

Illinois

New Hampshire

Rhode Island

West Virginia

Indiana

New Jersey

South Carolina

Wisconsin

Iowa x

1/ For figures assigned to value of home or other specified limitations on the home see page 2a, AFDC Chart, of this same item.

x Other special provision; refer to published document.

STATE LICENSING OF REAL PROPERTY AND PERSONAL PROPERTY WITH AFFECT ELIGIBILITY FOR AID TO FAMILIES WITH DEPENDENT CHILDREN, JAN. 31, 1973

[illegible]

For Estimates see following page.

Tax Limitations on Real Property and Personal Property Which Affect Eligibility for Aid to Families With Dependent Children, Jan. 31, 1977, Page 2

[illegible]

For $\Gamma = \Gamma_{\text{max}}$ we have $\Gamma_{\text{max}} \leq \Gamma_{\text{max}}$.

Item: 7. Property and Income
Limitations

Program: AFDC, page 2 c

No. of Programs: 54

Footnotes to chart on "State Limitations on Real Property and Personal Property Which Affect Eligibility for Aid to Families With Dependent Children, Jan. 31, 1973"

x See published document for details.

- 1/ Includes cash or face value of insurance without specifying a figure for value of insurance.
- 2/ Included in over-all limitation on real and personal property (Col. 2).
- 3/ Depending upon location of the house.
- 4/ Includes \$600 liquid assets and \$100 cash surrender value of insurance or burial arrangements; exempts child's share of an undistributed estate.
- 5/ California - car up to \$1500 in value, if needed for approved employment plan; Georgia - requires that car be needed for transportation to work; Montana - value specified may be exceeded in certain circumstances if car essential for employment or transportation.
- 6/ Other real property must be liquidated; in Delaware, unless producing income related to its value; in Indiana, unless rented; in New Hampshire, 6 months allowed for disposal if property unoccupied and not producing income.
- 7/ Non-residence real property is considered a resource liable to conversion to cash within a reasonable time.
- 8/ Plus money given or bequeathed specifically for burial.
- 9/ More valuable car must be sold; car limitation does not apply to recipient needing assistance less than 60 days.
- 10/ House, trailer, or boat lived in or owned by recipient; homestead is defined by County Tax Assessor.
- 11/ If a child is living with a relative other than his parents who is financially independent, maximum is \$600 per child up to \$1200 for a sibling group.
- 12/ May hold specified income-producing resources up to \$1000 market value in addition.
- 13/ Additional real property up to a specified value may be held in those States if producing income: Cuba, \$3000, market value; Kentucky, up to \$5000 equity if producing income; Tennessee, value included in over-all real property amount of \$9000; Virgin Islands, \$1500, assessed value, real and personal property; Virginia, \$5000, plus \$400 non-income producing property.
- 14/ "Tax appraised value." (Hawaii currently appraises property for tax purposes at 70% of market value.)
- 15/ No maximum is set on total, but values for items of personal property are specified; cash value of insurance and any other cash reserve must be utilized.
- 16/ Combination of all negotiable assets may not exceed \$2000 in value, including cash value of insurance, up to \$500 of liquid resources, and value of marketable real property other than the home; excludes real property, other than home, which is non-marketable.
- 17/ Savings from earnings of children are exempt; Illinois, specifies children in high school and requires plan for future education or vocational training.
- 18/ Also exempts jewelry up to \$100 or of sentimental value and musical instruments.
- 19/ When equity in saleable real property exceeds this figure, immediate steps must be taken to sell property or "dispose of excess amount."

Item: 7. Property and Income
 Limitations
 Program: AFDC, page 2d
 No. of Programs: 54

Footnotes to chart on "State Limitations on Real Property and Personal Property
 Which Affect Eligibility for Aid to Families with Dependent Children, Jan. 31, 1973"
 (continued)

- 20/ Reasonable efforts must be made to dispose of non-home real property.
- 21/ Exempt if necessary for an approved employment plan; in Michigan, exemption applies to car if family does not qualify for \$750 exemption of farming equipment.
- 22/ All real and personal property is limited to \$10,500. Within this total, family may have reserves of \$1500 including cash value of insurance, market value of non-home real property, and certain personal property including cash or securities.
- 23/ If value exceeds \$20,000 (based on 100% assessment) an evaluation and recommendation is made regarding disposal.
- 24/ No specific limitations on other real property, or on personal property not convertible to cash, but plans for liquidation of such real property within 6 months must be initiated as an eligibility condition.
- 25/ May be held pending liquidation or demonstration of unsaleability; in New Mexico, modified by specific conditions such as illness of client or repeated efforts to sell; in Puerto Rico, a period of 12 months in which to put the property to some use or to dispose of it; in Washington, must be offered for sale unless it cannot reasonably be sold, rented or leased.
- 26/ The \$1200 maximum includes liquid assets and cash, cash surrender value of life insurance, and farm tools and equipment.
- 27/ Equity in loan value of non-essential vehicles and non-essential personal property, such as cameras and television sets, is considered as a reserve.
- 28/ Maximum value is determined by size and needs of family.
- 29/ Personal property essential to a person's or a family's rehabilitation is exempt from the \$1000 limitation.
- 30/ Exempt up to \$1000 value if car is used in producing income; in Tennessee, car exempt if producing \$60 yearly net income.
- 31/ If child is not living with parents, amount is \$250 for 1 child, \$400 for 2 children, plus \$50 for each additional child up to \$600, family maximum. Maximums include cash surrender value of life insurance; but increases in cash or loan value due to interest or dividend accruals up to \$1000 per insured individual may be held if left on deposit with company.
- 32/ No maximum on life insurance for children under age 18.
- 33/ If accumulated from earned income.
- 34/ Considered a resource in determining eligibility.
- 35/ May own homestead as defined in State law, made applicable to AFDC by administrative policy.
- 36/ Combination of all negotiable assets must not exceed \$750 for individual and \$1450 for 2 persons, with \$50 additional for each added family member; these maximums include cash, securities, cars, and insurance.
- 37/ Limitation \$1000 if car needed for access to medical treatment or employment purposes, and no limitation if aid temporary.

Item: 7. Property and Income LimitationsProgram: AFDC, page 3No. of Programs: 54III. Provisions Prohibiting Transfer or Other Disposition of Property Without Adequate Consideration Prior to ApplicationStates with no specific provision.....24 States

Alaska	Hawaii	Massachusetts	Puerto Rico
Colorado	Illinois	Minnesota	Tennessee
D. C.	Indiana	Nevada	Virgin Islands
Florida	Iowa x	New York	Virginia
Georgia	Louisiana	North Carolina x	West Virginia
Guam	Maine	North Dakota	Wisconsin

x Special provision; see published document.

States with such provision, no time limit specified.....11 States

California	Kentucky	Ohio	Vermont
Connecticut 1/x	Nebraska	South Carolina	Washington x
Idaho	New Jersey	Texas	

1/ Provision relates to supervising relative if legally responsible and included in assistance group. Also, any disposal of real or personal property must be examined to determine the effect on eligibility.

x Other special provision; refer to published document.

States prohibiting such transfer or assignment within a specified number of years prior to receiving assistance.....29 States

State	Years	State	Years
Alabama	1 1/ x	Montana	5
Arizona	5	New Hampshire	5
Arkansas	5 x	New Mexico	2 x
Delaware	2 2/	Oklahoma	5
Kansas	5 x	Oregon	3 3/
Maryland	3	Pennsylvania	2 2/
Michigan	90 days	Rhode Island	5 3/
Mississippi	2	South Dakota	3 x
Missouri	5	Utah	5
		Wyoming	2

1/ Provision applies to "homestead above \$2500 or other property worth \$2000."

2/ Applies only to property worth \$500 or more.

3/ Applies only to transfer of real property.

x Other special provision; refer to published document.

Summary: Within 5 years: 9 States
 Within 3 years: 3 States
 Within 2 years: 5 States
 Within 1 year: 1 State
 Within 90 days: 1 State

Appendix C

Characteristics of AFDC Families with Fathers

Source: USDHEW, NCSS, *Findings of the 1973 AFDC Study Part I. Demographic and Program Characteristics*, pp. 25, 72, 78 and 79.

TABLE 9.--AFDC FAMILIES, BY RACIAL/ETHNIC GROUP OF PAYEE, 1973

25

OTHER THAN WHITE, AND SPANISH

SPECIFIED NEW REGION AND STATE	TOTAL FAMILIES	TOTAL	NEGRO/ BLACK	AMERICAN INDIAN	SPANISH ORIGIN/ DESCENT	OTHER	WHITE	UNKNOWN
TOTAL: NUMBER.....	249891	1816770	1360552	33594	399722	14502	2135936	37185
PERCENT.....	100.0	80.8	45.8	1.1	13.4	0.5	38.0	1.2
NEW REGION:								
II.....	529049	73.2	38.1	0.3	14.6	0.3	23.5	3.3
III.....	335952	50.4	57.1	0.2	2.1	#	38.5	2.1
IV.....	458012	71.3	71.0	0.3	0.4	#	23.1	0.1
V.....	619096	54.7	49.7	0.0	4.0	0.2	4.4	0.7
VI.....	255555	79.6	56.6	2.0	21.1	#	20.1	0.1
VII.....	121415	42.8	40.7	0.7	1.4	#	57.1	#
VIII.....	63279	40.7	6.2	10.1	24.3	0.2	56.7	0.5
IX.....	462296	54.7	21.5	1.7	22.9	2.5	64.2	1.2
STATE:								
ALABAMA.....	45531	78.8	18.1	#	0.0	0.0	11.2	0.0
ARIZONA.....	19600	71.7	16.1	25.1	29.5	#	21.2	0.0
ARKANSAS.....	23065	68.0	67.7	#	#	0.0	32.0	0.0
CALIFORNIA.....	411992	57.1	28.7	0.0	23.0	0.1	65.7	1.2
COLORADO.....	21874	52.9	11.5	0.1	40.3	#	26.1	#
FLORIDA.....	64622	74.3	72.4	#	1.0	0.0	59.5	#
GEORGIA.....	99718	74.4	76.5	0.0	#	0.0	23.3	#
ILLINOIS.....	193107	72.4	63.3	#	4.8	0.0	21.1	#
INDIANA.....	49526	46.2	44.4	#	1.7	0.0	53.5	#
IOWA.....	21895	13.3	11.0	0.0	1.4	#	65.5	#
KANSAS.....	20189	39.2	34.5	0.7	3.9	#	60.7	#
KENTUCKY.....	12292	39.8	30.8	0.0	0.0	0.0	19.7	0.0
LOUISIANA.....	85125	84.5	83.9	#	#	0.0	15.4	#
MARYLAND.....	61578	70.2	68.6	0.1	0.8	0.0	49.6	0.0
MICHIGAN.....	160215	51.5	48.4	1.1	1.8	#	42.4	#
MINNESOTA.....	37550	71.1	9.4	5.2	2.1	#	16.7	6.2
MISSISSIPPI.....	46414	87.7	87.4	#	0.0	0.0	32.3	0.0
MISSOURI.....	67699	54.5	54.3	0.0	#	0.0	44.5	0.0
NEBRASKA.....	11632	36.5	28.1	4.7	3.5	#	63.4	#
NEW JERSEY.....	114805	67.8	50.9	0.6	15.8	0.5	31.4	0.9
NEW YORK.....	358294	70.6	34.8	0.2	30.6	#	24.6	4.5
NORTH CAROLINA.....	43891	78.3	75.8	2.2	#	0.0	21.7	0.0
NORTH DAKOTA.....	4013	26.3	#	25.2	0.5	#	73.7	0.0
OHIO.....	137164	51.7	49.8	#	1.4	#	47.7	0.1
OKLAHOMA.....	79214	48.3	35.7	9.8	2.6	#	51.3	1
PENNSYLVANIA.....	169766	50.5	46.7	#	1.7	0.0	45.3	4.1
RHODE ISLAND.....	14581	21.2	16.9	#	4.0	#	78.8	2.1
SOUTH DAKOTA.....	4238	41.9	#	43.3	#	0.0	56.0	#
TENNESSEE.....	58005	63.0	67.7	#	#	#	36.6	#
TEXAS.....	120932	86.7	52.1	0.0	34.6	0.0	13.3	0.
VIRGINIA.....	45958	71.0	70.0	0.0	#	0.0	29.0	0.
WEST VIRGINIA.....	20517	11.3	10.9	0.0	#	#	88.7	0.
WISCONSIN.....	41534	34.9	33.4	2.0	3.5	#	60.8	#

NOT COMPUTED; BASE TOO SMALL.

21b

TABLE 22.—AFRICAN-AMERICAN FAMILIES WITH NATURAL OR ADOPTIVE FATHERS IN HOME,
BY HIGHEST GRADE OR LEVEL OF SCHOOL COMPLETED
BY FATHER, 1973

SPECIFIED NEW REGION AND STATE	TOTAL OF SUCH FAMILIES	HIGHEST GRADE OR LEVEL OF SCHOOL COMPLETED										PERCENT
		NONE, OR LESS THAN 5TH GRADE	5TH OR 6TH GRADE	7TH GRADE	8TH GRADE	9TH GRADE	10TH OR 11TH GRADE	HIGH SCHOOL GRAD- UATE	SOME COLLEGE DID NOT GRADUATE	COLLEGE GRADUATE	UNKNOWN	
TOTAL	379048	68593	31650	19700	48349	25415	55981	46577	13949	2470	46211	
PERCENT	100.0	18.1	8.3	5.2	12.8	6.7	14.8	12.3	3.7	0.7	12.5	
NEW REGION:												
II.....	72337	24.0	7.4	2.9	7.0	4.3	11.4	9.5	1.7	0	20.4	
III.....	48846	9.2	0.8	4.3	10.9	12.9	19.7	14.5	1.3	0.0	17.3	
IV.....	43376	37.1	15.2	4.1	13.0	3.6	4.9	4.4	1.1	0	17.3	
V.....	83593	7.2	6.5	5.3	16.7	7.6	22.2	18.3	3.6	0.5	17.7	
VI.....	25192	37.0	15.6	7.2	4.7	5.1	9.3	4.7	0.0	0	9.1	
VII.....	11371	12.2	12.8	6.9	23.4	4.1	12.4	9.8	4.4	0	13.1	
VIII.....	8653	8.4	4.4	7.4	14.3	8.3	23.0	19.0	5.1	0	5.7	
IX.....	62488	14.7	3.6	5.7	8.9	6.3	15.3	11.1	12.2	0	25.3	
STATE:												
ALABAMA.....	3826	37.6	16.6	0	0	0	9.7	6.9	0	3.0	19.4	
ARIZONA.....	2517	46.8	12.8	7.4	9.7	0	3.5	9.2	0	0.0	5.5	
ARKANSAS.....	3097	50.6	23.7	5.4	13.2	0	0	0	0	3.0	0	
CALIFORNIA.....	57401	13.6	0	0	9.3	4.8	16.1	11.0	12.7	0	24.6	
COLORADO.....	5046	11.4	8.3	6.4	12.9	6.0	19.7	22.0	4.5	0	7.6	
CONNECTICUT.....	5720	27.4	0	15.7	0	0	0	0	0	0	31.3	
DELAWARE.....	8078	39.6	15.5	11.4	14.5	8.4	0	0	0	0	7.1	
ILLINOIS.....	24045	6.4	6.4	5.5	24.7	5.5	21.1	14.1	0	0	6.7	
INDIANA.....	3759	9.6	0	0	9.5	0	17.5	11.1	0	0	39.3	
IOWA.....	2120	0	8.0	8.0	24.0	11.4	17.5	13.6	0	0.0	19.7	
KANSAS.....	2338	11.9	6.4	5.5	18.3	5.4	15.0	18.2	0	0	11.9	
KENTUCKY.....	6329	37.6	16.5	0	21.9	0	0	0	0	0	0.6	
LOUISIANA.....	6466	39.3	17.9	7.1	11.4	0	7.1	0	0	0	6.1	
MARYLAND.....	5134	0	0	0	12.7	9.9	7.1	7.0	6.0	0	45.1	
MICHIGAN.....	16650	3.3	4.7	3.3	12.2	4.5	21.4	16.8	2.3	0	26.9	
MINNESOTA.....	4008	0	0.0	6.3	15.6	7.3	13.6	25.4	9.4	0	17.7	
MISSISSIPPI.....	4903	44.1	11.8	5.3	11.0	0	5.5	0	0	0	15.0	
MISSOURI.....	6155	18.4	17.1	0	29.0	0	9.2	0	0	0	15.2	
NEBRASKA.....	858	0	0	0	16.4	0	16.4	16.4	9.8	0	22.0	
NEW JERSEY.....	5550	16.6	13.9	0	13.7	0	17.7	9.8	0.0	0	11.7	
NEW YORK.....	41116	9.6	3.3	2.0	0	0	16.8	15.0	2.2	0	35.4	
OHIO.....	3794	90.0	14.4	0	0	0	0	0	0	0	7.3	
PENNSYLVANIA.....	392	10.7	10.2	0	33.7	0	8.4	13.3	0	0.0	14.3	
RHODE ISLAND.....	21497	10.5	6.0	7.5	11.9	9.0	27.6	16.4	4.9	0	6.3	
SOUTH CAROLINA.....	4003	28.7	12.2	4.5	18.2	8.1	9.8	7.8	0	0	0	
TEXAS.....	30774	4.4	8.7	5.4	18.8	14.4	21.3	20.6	0	0	4.4	
UTAH.....	1863	0	5.4	0	5.7	0	12.4	15.2	0	0	44.2	
VIRGINIA.....	638	10.2	7.5	0	36.1	8.4	7.7	15.5	0	0.0	9.1	
WASHINGTON.....	9033	33.5	15.2	4.4	12.3	0	0	4.2	0	0.0	7.3	
WEST VIRGINIA.....	3358	24.9	17.8	16.1	12.9	0	0	0	0	0	15.7	
WISCONSIN.....	6808	22.8	15.7	7.8	17.9	4.1	8.9	3.9	0	0.0	9.7	
MISSOURI.....	5834	0	6.0	0	17.1	12.4	19.8	26.2	4.3	0	6.3	

NOT COMPUTED; BASE TOO SMALL.

TABLE 47.--APCC FAMILIES WITH NATURAL OR ACQUISITIVE PATENT IN FORCE, BY USUAL OCCUPATION OF FATHER, 1973

SPECIFIC REGION AND STATE	TOTAL OF SUPP FAMILIES	WHITE COLLAR WORKERS				BLUE COLLAR WORKERS				FARM WORKERS	
		PROFES- SIONAL, TECH- NICAL, AND KINDRED WORKERS	MANAGERS, ADMINISTRATORS, EXCEPT FARM	SALES WORKERS	CLERICAL AND KINDRED WORKERS	CRAFTSMEN AND KINDRED WORKERS	OPERATIVES, EXCEPT TRANSPORT	TRANSPORT EQUIPMENT OPERATORS	LABORERS, EXCEPT FARM	FARMERS AND FARM MANAGERS	LABORERS AND FARM WORKERS
TOTAL SUPP.....	714048	7450	1021	7214	8421	47753	32293	25787	121979	5193	22431
PERCENT.....	100.0	2.0	0.4	1.0	1.7	12.6	8.7	6.8	22.2	1.3	13.2
NEW ENGLAND	72197	1.0	0.0	0.7	3.6	6.5	4.7	6.7	26.1	0	16.3
MASSACHUSETTS.....	47645	1.1	0	2.4	8	16.3	9.8	6.6	19.1	0.5	3.3
VERMONT.....	47771	0	0	1.0	0	10.6	4.0	8.2	28.5	0.8	22.2
NEW HAMPSHIRE.....	47649	1.0	0.6	2.2	0.9	11.7	12.8	8.4	45.8	0	3.1
NEW JERSEY.....	21102	0	0.0	0	0	9.8	3.1	7.3	36.2	4.3	25.1
CONNECTICUT.....	17171	0	0	1.7	1.2	10.7	4.4	5.3	40.4	1.7	13.1
NEW YORK.....	24449	0	0	2.1	0	7.2	7.0	4.6	37.1	1.3	12.1
PA.....	22411	0.2	0	2.5	0	16.4	9.8	6.7	16.7	0	13.4
MIDWEST	7479	2.0	0	0.0	0	6.9	0	8.7	38.9	7.0	29.4
ILLINOIS.....	4711	1.1	0	0	0.0	11.9	6.4	0	34.0	0.0	21.1
INDIANA.....	4711	0.0	0.0	0.0	0.0	6.7	0	0	27.4	1.9	4.1
MICHIGAN.....	4711	0.0	0.0	0.0	0	11.7	10.7	8.8	15.3	0	18.1
OHIO.....	4711	0.0	0.0	0	0	6.1	6.1	0	37.8	0.0	17.4
MINNESOTA.....	4711	0	0.0	0	0	13.7	0	0	35.1	0.0	21.1
WISCONSIN.....	4711	0.0	0	0	0	16.3	0	10.0	19.6	0	15.1
NEBRASKA.....	2445	0	0.0	0	0	0.6	19.5	9.4	14.7	0.0	3.1
NEVADA.....	4711	0	0.0	0	0	17.3	15.4	0	25.4	0	0
UTAH.....	4711	0	0.0	0	0	11.4	7.9	0	45.3	0	0.3
ARIZONA.....	4711	0	0	0	0	14.0	8.7	8.6	15.5	0	0
NEW MEXICO.....	4711	0.0	0	0.0	0.0	7.0	7.9	4.7	45.3	7.8	16.1
TEXAS.....	4711	0	0.0	0.0	0.0	10.3	0	0	32.1	0	28.1
OKLAHOMA.....	4711	0	0.0	0	0	9.9	0	14.0	29.2	0	0
KANSAS.....	4711	0	0	0	0	10.9	10.1	7.7	46.4	0.0	1.3
MISSOURI.....	4711	0	0	0	0	19.4	7.3	8.3	37.5	0	0
NEBRASKA.....	4711	0	0.0	0	0.0	7.9	4.7	4.7	27.6	13.4	26.1
NEVADA.....	4711	0	0.0	0	0.0	9.2	0	0	40.8	0	23.7
UTAH.....	4711	0	0	0	0	11.4	0	8.2	37.8	0	0
ARIZONA.....	4711	0	0.0	0.0	0	21.8	11.8	0	25.7	0.0	0
NEW MEXICO.....	4711	1.0	0.0	0	5.7	6.8	8.7	10.5	11.1	0	1.3
TEXAS.....	4711	0.0	0.0	0.0	0.0	9.7	0	0	34.7	7.0	29.1
OKLAHOMA.....	4711	0.0	0.0	0	0	8.4	0	0	31.4	14.3	16.1
KANSAS.....	4711	0	0.0	0	0.0	15.7	7.5	8.9	42.3	0.0	0
MISSOURI.....	4711	0	0	0	0	16.4	0	4.4	46.7	0	21.1
NEBRASKA.....	4711	0	0	1.1	0	19.1	11.7	5.0	16.1	0.0	0
NEVADA.....	4711	0	0.0	0	0.0	30.2	27.5	7.6	14.3	0.0	0
UTAH.....	4711	0	0	0	0	7.7	0	0	21.9	4.7	21.1
ARIZONA.....	4711	0.0	0	0.0	0	8.6	0	0	37.1	0	12.1
NEW MEXICO.....	4711	0.0	0	0	0	10.9	0	13.9	29.0	0	21.1
TEXAS.....	4711	0.0	0	0	0	0	14.8	0	41.9	0.0	0.3
OKLAHOMA.....	4711	0	0	0.0	0.0	10.0	4.7	5.1	71.8	0	3.1
KANSAS.....	4711	0.0	0	1.1	0	18.8	4.4	8.0	41.0	0.0	0.3

CONTINUED

TABLE 47. --AFDC FAMILIES WITH NATURAL
OR ADOPTIVE FATHER IN
HOME, BY USUAL OCCUPATION
OF FATHER, 1973--CONTINUED

SERVICE WORKERS

SPECIFIED NEW REGION AND STATE	TOTAL OF SUCH FAMILIES	SERVICE WORKERS, EXCEPT PRIVATE HOUSEHOLD WORKERS	PRIVATE HOUSEHOLD WORKERS	OCCUPA- TION UNKNOWN	UNKNOWN WHETHER EVER EMPLOYED	NEVER EMPLOYED
TOTAL: NUMBER.....	379048	26190	347	24603	18114	3842
PERCENT.....	100.0	6.9	0.1	6.5	4.8	1.0
NEW REGION:						
II.....	72337	5.5	0.0	10.8	9.3	2.2
III.....	48646	10.5	#	4.4	2.9	1.2
IV.....	42376	4.0	0.0	2.3	2.6	1.8
V.....	93593	6.3	#	4.8	4.2	#
VI.....	25192	5.4	#	1.8	2.1	0.8
VII.....	11371	5.5	0.0	8.1	3.8	#
VIII.....	8653	5.5	#	11.6	6.1	#
IX.....	62488	4.7	0.0	8.4	5.0	#
STATE:						
ALABAMA.....	3826	#	0.0	6.9	0.0	0.0
ARIZONA.....	2517	#	0.0	#	9.2	#
ARKANSAS.....	3057	5.3	#	0.0	#	#
CALIFORNIA.....	57401	4.2	0.0	7.6	5.1	0.0
COLORADO.....	5046	4.5	0.0	16.7	3.8	#
FLORIDA.....	5720	0.0	0.0	#	#	#
GEORGIA.....	8078	#	0.0	0.0	#	#
ILLINOIS.....	29045	7.8	#	#	5.5	0.0
INDIANA.....	3759	#	0.0	9.5	11.1	0.0
IOWA.....	2120	6.8	0.0	6.8	#	0.0
KANSAS.....	2238	5.4	0.0	8.6	#	#
KENTUCKY.....	6329	#	0.0	#	5.5	#
LOUISIANA.....	6466	8.3	0.0	#	#	#
MARYLAND.....	5134	11.3	0.0	16.9	#	0.0
MICHIGAN.....	15650	6.2	#	4.6	2.7	#
MINNESOTA.....	4008	5.2	0.0	8.3	#	0.0
MISSISSIPPI.....	6903	5.5	0.0	#	#	#
MISSOURI.....	6155	#	0.0	7.9	#	#
NEBRASKA.....	858	#	0.0	11.7	#	#
NEW JERSEY.....	5550	#	0.0	0.0	11.8	0.0
NEW YORK.....	41116	12.9	0.0	9.9	8.8	#
NORTH CAROLINA.....	3704	#	0.0	#	#	#
NORTH DAKOTA.....	392	5.4	#	#	10.2	0.0
OHIO.....	21497	4.5	0.0	7.5	3.7	#
OKLAHOMA.....	4003	#	0.0	#	#	#
PENNSYLVANIA.....	30276	13.1	0.0	#	#	#
RHODE ISLAND.....	1863	8.5	0.0	11.2	0.0	#
SOUTH DAKOTA.....	638	#	0.0	8.9	11.8	0.0
TENNESSEE.....	5317	11.1	0.0	#	#	0.0
TEXAS.....	9033	11.6	0.0	2.7	#	#
VIRGINIA.....	3358	#	#	9.7	#	0.0
WEST VIRGINIA.....	6868	2.5	0.0	5.0	5.0	2.9
WISCONSIN.....	5634	6.9	0.0	#	#	0.0

NOT COMPUTED; BASE TOO SMALL.

Appendix D

**Amount of Monthly AFDC-UF Payments, by State
July 1973 - June 1974**

**Source: USDHEW, National Center for Social
Statistics, *Public Assistance Statistics*, NCSS
Report A-2, Table 5 in monthly issues July
1973 through June 1974.**

Table 8.--Add to families with dependent children, unemployed-father: recipients: Recipients of money payments and amount of payments, by State, July, 1973 ^{1/}^{2/} Excludes vendor payments for medical care and cases receiving only such payments ^{3/}

State	Number families	Number of recipients		Payments to recipients			Percentage change from--			
				Total amount	Average per--		June 1973 in--		July 1972 in--	
		Total ^{2/}	Children		Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	98,671	456,105	274,692	\$26,767,367	\$271.03	\$58.66	-5.6	-5.1	-20.4	-16.2
Calif.....	32,895	143,726	88,250	8,451,262	256.32	58.80	-7.7	-4.9	-25.2	-23.9
Colo.....	1,078	5,095	2,952	265,948	264.85	51.81	-10.2	-9.9	-47.5	-47.0
Del.....	32	355	211	15,392	72.73	34.91	-2.2	-3.5	-65.0	-44.8
D. C.....	2,356	9,269	6,677	445,151	188.09	47.81	+1.3	+4.8	445.9	469.5
Ga.....	1	3	1	185	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
Ill.....	949	4,228	2,286	331,687	349.51	78.45	-7.3	-5.8	-15.2	-13.4
Ind.....	14,460	77,652	44,083	4,211,925	291.69	59.13	-4.8	-4.6	-16.1	-10.0
Kans.....	266	1,188	698	58,389	237.35	49.15	-17.6	-25.0	-53.6	-58.7
Mich.....	776	3,506	2,029	158,867	206.73	45.31	-2.8	-2.9	-7.9	-4.6
Miss.....	2,553	12,325	7,663	715,242	280.16	58.03	+1.6	-23.0	+2.5	+1.4
Minn.....	10,360	51,076	30,577	3,393,069	327.32	66.43	-5.6	-5.6	-6.1	-7.6
Mo.....	1,423	6,490	3,732	451,078	316.99	69.50	-9.5	-12.5	-12.7	-19.7
Nebr.....	30	194	133	6,825	(3/)	35.18	-13.4	-14.3	-64.9	-68.5
N. Y.....	6,357	30,354	18,265	2,194,324	345.18	71.82	-9.6	-4.2	-13.0	-4.2
Ohio.....	9,941	47,087	27,085	2,017,239	202.92	42.86	-2.4	-1.9	-16.8	-16.0
Ore.....	132	704	451	27,584	208.97	39.18	-15.8	-16.5	-51.1	-69.4
Pa.....	2,436	10,107	5,705	633,652	260.33	62.69	-4.9	+18.8	-17.3	+4.1
R. I.....	2,654	12,022	6,725	753,916	284.07	62.71	-5.6	-8.0	-29.1	-23.2
S. C.....	1,862	380	1,128	91,936	242.67	49.40	-8	-3.2	-45.9	-46.5
Utah ^{2/}	1,808	8,588	5,226	420,160	234.11	49.86	+4.9	+4.8	+7	+7
Va.....	624	2,980	1,760	194,806	312.19	65.37	-8.7	-8.4	+9.4	+13.5
Wash.....	4,199	17,173	9,117	1,108,976	264.19	64.37	-2.9	-2.4	-23.7	-23.4
W. Va.....	945	4,463	2,980	196,180	207.10	42.07	-15.9	-13.0	-51.4	-25.9
Wyo. ^{2/}	2,018	10,478	6,278	602,564	297.59	57.51	+5.5	-12.0	-22.4	-31.0

^{1/} Data for this report of the program, shown separately here, are included in data for the total program. All data subject to revision.^{2/} Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.^{3/} Average payment not computed on base of fewer than 50 families; percentage change on base of fewer than 100 recipients.^{4/} Payments for some months fluctuate noticeably due to the influence of retroactive payments.^{5/} Estimated by State.

Table 8.--Aid to families with dependent children, unemployed-father argument: Recipients of money payments and amount of payments, by State, August 1973 ^{1/}

^{2/}Excludes vendor payments for medical care and cases receiving only such payments^{3/}

State	Number of families	Number of recipients		Payments to recipients		Percentage change from--			
		Total ^{2/}	Children	Total amount	Average per-- Family	Recipient	July 1973 in--		August 1972 in--
							Number of recipients	Amount	
Total....	95,837	439,495	264,288	\$28,102,909	\$273.29	\$59.57	-3.0	-1.6	-22.6
Calif.....	31,581	137,631	84,174	8,142,492	251.03	59.16	-4.2	-3.7	-28.7
Colo.....	992	4,716	2,744	263,565	261.51	51.64	-7.4	-7.7	-47.9
Del.....	65	313	186	10,956	169.02	34.80	-11.3	-11.3	-53.0
D. C.....	2,359	9,278	6,483	443,917	183.18	47.85	-7.1	-4.2	-47.3
Ill.....	24,087	3,906	2,253	321,028	361.15	82.19	-3.2	-3.2	-21.3
Mass.....	2,072	70,300	42,726	4,155,123	291.96	59.11	-3.0	-1.3	-13.3
Mich.....	231	1,121	664	56,705	241.48	50.38	-5.6	-2.8	-16.1
Mo.....	772	3,564	2,055	161,072	201.64	45.45	-4.1	-4.5	-45.6
N.H.....	2,579	12,340	7,460	733,390	281.37	59.43	-4.1	-4.5	-45.6
N.J.....	10,037	49,421	29,375	3,359,614	331.74	67.98	-3.2	-1.0	-13.7
N.Y.....	1,560	6,253	3,619	476,580	311.66	68.22	-3.7	-5.4	-25.8
Pa.....	1,156	5,037	2,731	3,632	311.66	68.22	-3.7	-5.4	-25.8
W. Va.....	4,337	28,528	17,600	2,145,431	347.33	72.63	-19.6	-16.9	-71.7
Wyo.....	9,740	44,196	27,172	1,594,478	201.35	42.17	-3.3	-2.2	-14.3
Ohio.....	126	712	471	25,844	201.13	36.30	-1.9	-1.1	-17.9
Ore.....	2,514	10,016	5,656	644,932	261.50	66.12	-1.5	-4.9	-48.3
R. I.....	2,610	11,797	6,387	776,289	291.43	65.80	-1.9	+3.0	-18.3
Tenn.....	324	1,825	1,105	90,677	241.43	49.69	-2.0	-1.4	-23.7
Utah.....	1,923	7,624	4,809	382,925	191.14	50.24	-1.0	+15.7	-48.2
Vt.....	613	2,892	1,678	190,612	311.95	65.91	-3.0	-2.2	-16.7
Wash.....	4,213	17,113	9,028	1,113,696	261.35	65.08	-3.3	+4.4	-20.3
W. Va.....	870	4,308	2,747	182,526	201.80	42.37	-7.6	-7.0	-47.1
Wyo.....	1,688	8,453	4,991	554,083	321.23	65.55	---	---	---

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Average payment not computed on base of fewer than 30 families.

^{4/} Payments for some months fluctuate noticeably due to the influence of retroactive payments.

^{5/} Estimated by State.

Table 8.--Add to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, September 1973 ^{1/}

^{2/}Excludes vendor payments for medical care and cases receiving only such payments

State	Number of families	Number of recipients		Payments to recipients		Percentage change from--			
		Total ^{2/}	Children	Total amount	Average per--		August 1973 in--		September 1972 in--
					Yearly	Recipient	Number of recipients	Amount	
Total.....	91,020	421,569	254,098	2,426,070,428	2/ 1236.43	2/ 461.84	-4.0	2/ -0.4	2/ -13.7
Calif.....	29,341	129,677	79,662	8,053,646	272.63	62.11	-5.8	-1.1	-23.5
Col.....	993	4,690	2,717	242,086	243.79	51.62	-6	-6	-54.9
Del.....	58	270	156	9,738	159.28	34.21	-14.3	-15.9	-50.5
D. C.....	2,455	9,673	6,975	461,169	187.85	47.68	-4.3	-42.7	-34.7
Ill.....	768	3,499	2,010	274,056	356.84	78.12	-10.4	-14.6	-34.9
Ind.....	19,381	67,941	41,364	3,985,123	293.65	58.70	-3.4	-4.0	-17.4
Iowa.....	209	1,016	600	50,795	243.04	50.00	-9.4	-10.4	-16.0
Mass.....	657	3,018	1,727	135,177	205.75	44.79	-14.8	-17.2	-31.5
Mich.....	2,395	12,390	7,680	2,156,612	2/ 445.71	2/ 93.35	-4.4	2/ -37.7	-23.5
Miss.....	9,340	47,191	28,317	3,327,747	348.82	70.52	-4.5	-1.0	-23.5
Minn.....	1,316	6,090	3,545	421,431	330.24	69.20	-2.6	-1.2	-25.2
Mo.....	72	360	98	5,174	36.96	36.96	-10.3	-8.8	-71.7
N. H.....	6,012	28,737	17,107	2,090,251	347.68	72.74	-2.7	-2.6	-10.2
N. J.....	9,110	46,196	27,172	1,994,478	304.35	43.17	---	---	---
N. Y.....	1,112	5,217	3,177	21,166	206.84	39.20	-17.0	-10.4	-46.7
Ohio.....	1,455	9,217	5,198	614,526	320.39	66.67	-8.3	-7.6	-31.4
Ore.....	2,495	11,286	6,208	783,356	305.95	67.64	-4.3	-1.7	-3.2
Penn.....	1,896	8,511	4,911	451,110	240.42	49.66	-6.1	-6.1	-30.8
R. I.....	1,408	6,916	4,362	312,646	194.43	45.22	-9.3	-18.4	-35.8
Utah.....	625	2,539	1,702	193,617	309.79	65.88	-1.6	-1.6	-16.7
Wash.....	4,110	14,679	8,786	1,135,367	276.25	68.07	-2.5	-1.9	-23.3
W. Va.....	4,550	4,237	2,711	186,483	219.39	44.01	-8.6	-2.2	-21.7
Wis.....	1,499	7,464	4,483	546,134	364.35	73.17	-4	-2	-43.4

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Amount includes \$10,000 representing grants for special needs in Massachusetts for the quarter, October-December 1973. The average payments and percentage changes are affected accordingly.

^{4/} Average payment not computed on base of fewer than 50 families.

^{5/} Payments for some months fluctuate noticeably due to the influence of retroactive payments.

^{6/} Represents data for August; September data not reported.

^{7/} Estimated by State.

Table 8.—Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, October 1973 ^{1/}[Excludes vendor payments for medical care and cases receiving only such payments ^{2/}

State	Number of families	Number of recipients		Payments to recipients			Percentage change from—		
				Total amount	Average per—		September 1973 in—	October 1973 in—	
		Total ^{3/}	Children		Family	Recipient	Number of recipients	Amount	Amount
Total.....	89,124	411,459	344,381	825,661,331	\$290.37	\$62.85	-2.1	-0.8	-18.4
Calif.....	28,453	124,352	77,932	8,049,858	279.07	63.70	-1.4	(3/)	-30.6
Colo.....	2,819	12,189	2,551	264,319	184.59	60.02	-6.4	-44.8	-53.8
Conn.....	44	4,203	2,120	6,838	(5/)	33.34	-24.1	-26.0	-43.1
D. C.....	2,500	9,504	7,044	468,048	187.13	47.73	-1.4	-10.4	-41.3
Ill.....	689	3,050	1,745	245,140	355.19	79.33	-11.7	-10.4	-36.8
Ind.....	13,378	66,943	49,773	4,481,968	334.33	66.53	-1.5	-21.4	-41.0
Kans.....	194	917	534	44,701	240.13	40.33	-5.0	-2.3	-16.1
Md.....	442	2,468	1,469	124,705	282.21	61.07	-4.4	-24.3	-40.9
Mass.....	2,619	12,435	7,748	718,951	285.16	72.60	-1.8	+1.1	-15.8
Mich.....	9,379	46,321	27,765	3,362,925	358.16	81.07	-1.8	+1.1	-15.8
N.H.....	1,204	5,900	3,451	427,079	325.34	72.39	-3.1	+1.3	-35.7
N.J.....	1	4	2	43	(4/)	(5/)	(3/)	(3/)	(3/)
N.M.....	18	112	76	3,334	360.55	35.13	-20.0	-24.0	-75.3
N.Y.....	5,793	27,717	14,628	2,015,836	360.55	72.37	-3.5	-3.4	-17.1
Ohio ^{2/}	9,740	46,196	27,272	1,794,478	206.15	43.17	-10.7	-48.3	-40.2
Ore.....	103	358	332	25,079	243.9	71.20	0	-44.9	-33.2
Penn.....	2,174	5,200	3,020	597,028	272.79	51.17	-2.5	-23.5	-35.2
R.I.....	2,558	11,343	6,943	591,728	231.70	51.17	-8.5	-10.6	-35.3
S. C.....	1,124	5,446	3,470	74,943	333.61	48.51	---	---	---
Utah ^{2/}	1,114	5,456	3,470	309,978	276.54	54.81	---	---	---
Vt.....	594	2,433	1,464	180,326	303.97	64.74	-3.3	-3.2	-41.0
Wash.....	3,964	16,189	8,545	1,103,426	276.07	60.17	-2.9	-2.8	-27.0
W. Va.....	748	3,823	2,454	159,210	205.00	41.36	-9.7	-45.2	-44.7
Wis.....	1,393	7,012	4,236	499,373	354.96	70.50	-6.1	-9.3	-41.4

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.^{2/} Includes as recipients the parents and other persons who are the caretaker relative other than a parent in families in which the requirements of such adults are not met.^{3/} Average payment not computed on basis of fewer than 10 families or recipients.^{4/} Average payment not computed on basis of fewer than 10 families or recipients.^{5/} Program reinstated October 1973.^{6/} Payments for some months fluctuate noticeably due to the influence of retroactive payments.^{7/} Represents data for September; October data not reported.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, November 1973^{1/}

^{1/}Excludes vendor payments for medical care and cases receiving only such payments^{2/}

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--		
		Total ^{2/}	Children	Total amount	Average per--		October 1973 in--		November 1972 in--
					Family	Recipient	Number of recipients	Amount	
Total.....	87,599	402,694	243,282	\$25,172,275	\$207.16	\$62.51	-1.0	-3.0	-15.9
Calif.....	28,675	125,387	77,479	7,331,386	235.87	58.47	-8	-8.9	-31.3
Colo.....	812	4,171	2,431	250,630	263.78	60.09	-5.0	-4.9	-39.9
Del.....	49	210	123	10,643	(U)	33.83	47.3	48.8	-57.1
D. C. ^{3/}	2,500	9,806	7,064	446,948	180.23	79.75	---	---	---
Ill.....	637	2,924	1,640	232,177	353.39	66.41	-3.4	-2.3	-41.4
Iowa.....	12,893	64,684	39,327	4,294,655	333.24	53.08	-11.8	-4.1	-21.9
Kans.....	165	809	480	42,943	260.26	53.08	-11.8	-4.1	-21.9
Mich.....	611	2,772	1,613	129,021	211.16	66.54	-3.3	-3.0	-37.4
Miss.....	2,622	12,475	7,719	804,882	306.97	66.52	-4.3	-4.0	-24.6
Mo.....	9,135	45,073	26,999	3,253,164	356.12	72.18	-2.7	-3.3	-41.4
Mont.....	1,210	5,533	3,193	401,483	331.80	72.82	-6.6	-4.0	-30.4
Neb.....	5	22	12	768	(U)	(U)	(U)	(U)	(U)
N.H.....	17	111	76	4,039	(U)	36.39	-9	-2.7	-67.3
N.J.....	5,640	26,894	16,033	349,28	349.28	73.30	-3.0	-2.5	-20.1
N.Y.....	1,239	43,537	23,494	2,027,616	215.46	46.97	-2.7	-2.3	-16.8
Ohio.....	2,484	494	312	23,204	241.71	46.97	-6.4	-7.5	-42.8
Ore.....	2,466	9,377	5,275	704,826	267.92	75.17	-9.7	-7.5	-42.8
Pa.....	2,664	11,069	6,147	712,180	289.05	64.34	-4.3	-4.0	-20.2
R. I.....	231	1,854	1,018	131,435	(U)	(U)	(U)	(U)	(U)
Utah ^{4/}	1,114	5,456	3,470	309,978	276.26	56.81	---	---	---
Vt.....	360	2,775	1,632	170,438	316.07	64.85	-2.2	-2.0	-48.1
Wash.....	4,305	17,442	9,432	1,120,335	263.46	69.17	-49.0	-40.4	-27.9
W. Va.....	627	3,154	2,058	139,310	220.72	43.86	-17.5	-12.5	-56.9
Wisc.....	1,339	6,487	4,035	537,210	357.47	79.59	-4.6	-4.7	-45.0

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Average payment not computed on basis of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.

^{4/} Represents data for October; November data not reported.

^{5/} Program retroactive October 1973.

^{6/} Payments for some months fluctuate noticeably due to the influence of retroactive payments.

^{7/} Average payment and percentage changes not computed; payments made bi-monthly.

^{8/} Represents data for September; October and November data not reported.

Table 8. ---aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, December 1973 ^{1/}^{2/}Excludes vendor payments for medical co's and cases receiving only such payments^{3/}

State	Number of families	Number of recipients		Payments to recipients		Percentage change from--			
				Total amount	Average per--	November 1973 in--		December 1972 in--	
		Total ^{2/}	Children			Recipients	Amount	Number of recipients	Amount
Total.....	90,681	415,510	250,547	^{2/} \$26,253,069	^{2/} \$139.95	^{2/} \$63.28	^{2/} +4.4	-28.0	^{2/} -20.5
Calif.....	30,399	132,456	81,809	8,031,108	255.06	60.55	+9.5	-29.7	-28.2
Colo.....	913	4,321	2,514	260,147	286.94	60.07	+3.8	-44.2	-39.8
Del.....	59	265	148	8,828	149.63	33.31	+20.5	-47.9	-31.2
D.C.....	7,821	10,199	7,371	477,232	132.08	46.79	+2.8	-17.0	-23.7
Ill.....	385	2,594	1,448	201,145	333.84	77.54	-13.4	-48.6	-40.0
Mass.....	12,665	63,834	39,140	4,175,516	320.20	65.41	-2.8	-23.1	-23.4
N.H.....	160	775	437	41,216	237.60	53.18	-4.0	-61.6	-32.3
N.J.....	2,439	12,372	7,760	2,985,981	241.02	45.88	+3.2	-30.5	-21.0
N.Y.....	9,437	44,573	27,844	3,669,714	358.32	72.35	+3.3	-20.2	-24.0
Ohio.....	1,104	5,417	3,149	381,840	322.52	70.49	-1.7	-30.6	-25.0
Pa.....	5	22	12	3,753	357.11	36.44	-2.2	-37.8	-32.3
R.I.....	16	103	72	3,753	357.11	36.44	-2.2	-37.8	-32.3
S.C.....	5,630	27,094	16,229	2,015,585	358.72	46.34	+1.4	-17.0	-9.5
Tenn.....	9,094	42,819	25,147	1,997,598	219.39	46.34	-1.4	-17.0	-9.5
Tex.....	92	477	303	22,489	244.23	57.10	-3.2	-37.0	-26.8
Utah.....	3,399	12,748	6,437	985,753	295.53	57.92	+3.9	-30.6	-21.1
Va.....	2,303	10,262	5,370	585,552	295.53	57.92	-3.0	-30.6	-21.1
W.V.....	311	1,468	886	43,720	377.53	55.27	-3.0	-41.8	-37.0
Wash D.C.....	1,164	5,627	3,360	311,340	272.53	55.27	-3.0	-41.8	-37.0
Wis.....	585	2,784	1,638	197,817	336.79	69.26	+4.6	-27.9	-26.4
Wyo.....	4,810	19,493	10,729	1,414,578	294.08	70.82	+13.2	-41.6	-34.3
	480	3,381	2,171	155,902	258.27	64.11	+7.2	-43.3	-36.4
	1,481	6,766	4,062	535,375	365.08	78.83	+1.2	-43.3	-36.4

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.^{2/} Includes all recipients the children and one for both parents or one caretaker relative other than a parent in families in which the requirements of such adults were included in determining the amount of assistance.^{3/} Amount included \$316,000 representing grants for special needs in Massachusetts for the quarter January-March 1974. The average payments and percentage changes were affected accordingly.^{4/} Average payment not based on base of fewer than 50 families or recipients; percentage change on base of fewer than 100 recipients.^{5/} Figures for some months fluctuate noticeably due to the influence of retrospective payments.^{6/} Average payment and percentage changes not computed; payments made bi-weekly.^{7/} Represents data for October; November and December data not reported.

Table 3.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, January 1974.^{1/}

^{2/}Excludes vendor payments for medical care and cases receiving only such payments.^{3/}

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--		
		Total 2/	Children	Total amount	Average per--		December 1973	January 1973	In--
					Family	Recipient			
Total.....	95,898	439,030	264,166	\$27,802,561	\$789.92	\$63.32	+5.7	+5.7	-34.7
Calif.....	32,762	162,747	88,457	8,362,222	261.25	55.38	+7.6	+4.6	-26.7
Colo.....	1,135	5,312	3,057	320,846	282.48	46.10	+22.7	+2.3	-32.7
Del.....	63	281	159	9,293	147.51	32.07	+6.0	+5.3	-35.8
D. C.....	2,638	10,638	7,435	48,972	182.70	44.56	+7.7	+1.0	-43.2
Ill.....	603	2,465	1,491	212,080	212.71	79.58	+7.7	+1.0	-43.2
Mass.....	13,112	65,978	40,380	4,468,334	340.78	67.22	+7.6	+7.0	-46.3
Miss.....	17	73	39	6,985	(3/)	48.79	(3/)	(3/)	-15.5
Mo.....	211	1,000	584	32,316	247.94	52.32	+2.6	+2.6	-33.4
N. H.....	869	3,930	2,276	187,008	215.20	47.58	+4.1	+4.1	-33.4
N. J.....	1,941	7,017	3,937	500,123	324.54	71.27	+4.1	+4.1	-33.4
N. Y.....	10,419	50,809	30,143	3,672,050	332.44	72.27	+9.1	+9.1	-35.5
Ohio.....	1,193	5,517	3,205	405,461	339.30	73.56	+1.8	+4.2	-33.6
Pa.....	6	25	13	896	(3/)	(3/)	(3/)	(3/)	-10.2
Tex.....	18	79	41	4,185	232.50	36.39	+11.7	+11.5	-32.7
W. Va.....	5,737	27,513	16,375	2,225,173	287.86	80.88	+1.5	+1.5	-32.7
Wis.....	5,632	45,319	26,421	2,104,102	218.00	46.43	+5.6	+5.3	-32.7
Wyo.....	2,728	11,414	6,864	18,429	236.27	44.31	+13.2	+13.2	-32.7
Ariz.....	3,738	15,830	8,604	917,479	244.31	57.97	+24.3	+24.3	-32.7
Pa.....	2,239	10,272	5,666	666,628	282.59	64.27	+2.0	+2.0	-32.7
N. I.....	351	1,715	1,038	103,919	(3/)	(3/)	(3/)	(3/)	-32.7
Utah 2/.....	1,094	5,542	3,498	325,759	297.77	58.78	---	---	---
Vt.....	432	2,950	1,750	206,774	322.43	70.09	+6.0	+7.2	-42.8
Wash.....	5,448	27,632	12,536	1,588,093	291.13	69.47	+14.3	+12.1	-42.8
W. Va.....	742	3,656	2,310	290,000	334.35	51.97	+6.1	+21.9	-41.2
Wyo.....	1,465	7,176	4,258	576,288	393.37	80.31	+6.1	+8.0	-42.4

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.

^{4/} Program initiated January 1974.

^{5/} Not computed; data not comparable.

^{6/} Program initiated October 1973.

^{7/} Payments for some months fluctuate noticeably due to the influence of retroactive payments.

^{8/} Average payment and percentage changes not computed; payments made bi-weekly.

^{9/} Representative data for December; January data not reported.

Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments,^{1/} by State, February 1974. ^{1/}

[Excludes vendor payments for medical care and cases receiving only such payments.]

State	Number of families	Number of recipients		Payments to recipients		Percentage change from--		
		Total ^{2/}	Children	Total amount	Average per-- Family	Recipient	January 1974 in--	
							Number of recipients	Amount
Total.....	101,325	460,943	277,137	\$29,385,816	\$790.02	\$83.75	+5.0	+5.7
Calif.....	33,997	147,543	91,734	8,866,439	260.80	60.09	+3.4	+3.6
Colo.....	1,443	6,619	3,754	402,872	279.16	40.86	+24.6	+25.6
Del.....	65	292	161	10,101	155.60	34.59	+13.9	+15.6
D. C.....	2,481	10,403	7,533	481,808	179.71	46.31	+1.3	(3/)
Ill.....	600	2,673	1,489	217,109	360.05	81.22	+3.4	+2.0
Ind.....	13,332	66,916	40,871	4,390,778	329.34	65.62	+1.4	+1.7
Iowa.....	40	178	98	15,374	(4/)	86.37	(6/)	(6/)
Kans.....	249	1,173	682	62,490	256.59	54.47	+17.3	+22.1
Mich.....	815	2,125	1,110	181,010	223.10	49.12	-6.2	-3.2
Miss.....	1,750	7,920	4,637	523,882	299.36	66.15	+12.9	+4.8
Minn.....	11,040	53,591	31,631	3,911,005	354.26	72.98	+5.5	+6.5
Mo.....	1,228	5,628	3,266	417,800	340.23	74.24	+2.1	+3.0
Nebr.....	10	40	20	1,498	(4/)	(6/)	(6/)	(7/)
N. Y.....	21	133	91	4,849	(6/)	36.46	+15.7	+15.9
N. C.....	7,044	32,226	19,720	412,591	412.59	90.44	+17.1	+17.3
Ohio.....	10,192	47,414	27,475	2,209,869	216.82	46.61	+4.6	+5.0
Okl.....	103	324	224	23,930	232.33	65.93	+25.8	+29.8
Ore.....	4,004	16,852	9,084	984,446	265.87	58.42	+6.5	+7.3
Pa.....	2,353	10,283	5,583	526,176	222.37	50.97	+9.9	+11.3
R. I.....	392	1,882	1,122	112,841	(9/)	(2/)	+9.7	(2/)
Utah ^{10/}	1,103	5,657	3,567	334,757	303.50	59.18	---	---
Vt.....	705	3,327	1,942	234,428	332.32	70.46	+12.8	+13.4
Wash.....	5,720	24,039	13,066	1,726,177	301.78	21.81	+5.3	+4.8
W. Va.....	1,016	2,580	1,540	193,762	231.75	47.47	+11.6	+2.0
Wis.....	1,579	7,867	4,632	638,524	406.39	81.16	+9.6	+10.8
Wyo.....	---	---	---	---	---	---	---	---

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Decrease of less than 0.05 percent.

^{4/} Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.

^{5/} Program initiated January 1974.

^{6/} Not computed; data not comparable.

^{7/} Program reinitiated October 1973.

^{8/} Payments for some months fluctuate noticeably due to the influence of retroactive payments.

^{9/} Average payment and percentage changes not computed; payments made bi-weekly.

^{10/} Represents data for January; February data not reported.

Table 5.--Aid to families with dependent children, unemployed--(rather segment); Recipients of money payments and amount of payments, by State, March 1974 1/

2/ Excludes vendor payments for medical care and cases receiving only such payments 3/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
				Total amount	Average per--		February 1974 in--		March 1973 in--	
		Total 2/	Children		Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	102,427	445,780	279,770	3/ \$29,815,344	3/ \$290.52	3/ \$64.01	+1.0	3/ +1.4	-21.5	3/ -14.7
Calif.....	34,983	145,864	93,230	8,995,312	260.07	60.02	+1.6	+1.5	-26.1	-22.6
Colo.....	1,341	6,796	3,781	417,241	270.74	59.66	+5.7	+3.6	-19.8	-8.1
Del.....	1,608	7,306	4,174	410,552	250.18	34.48	+4.8	+4.5	-38.2	-38.5
D. C.....	2,754	10,638	7,493	894,214	325.45	46.46	+2.3	+2.6	+23.7	+17.0
Hawaii.....	620	2,773	1,553	210,846	351.04	78.49	+7.2	+7.2	-46.1	-44.6
Ill.....	13,225	66,440	40,385	4,400,061	332.46	66.23	-7.7	+2.2	-25.6	-18.9
Iowa.....	75	312	212	168,377	223.77	78.27	+109.0	+89.4	(2/)	(2/)
Kans.....	245	1,169	682	45,393	195.37	53.37	-3.3	-2.3	-48.2	-48.9
Mass.....	788	3,231	1,891	167,232	212.12	51.44	-11.8	-7.6	-28.4	-23.4
Mich.....	1,886	8,510	4,995	3/ 794,259	3/ 421.13	3/ 79.33	+7.4	3/ +51.6	-29.5	3/ -14.3
Minh.....	11,704	56,563	33,289	4,095,388	349.81	72.60	+5.5	+4.7	-7.9	-1.7
Minn.....	1,221	5,632	3,270	418,820	343.01	74.36	+3.1	+2.2	-31.6	-33.2
Mo.....	12	47	23	4,905	(5/)	(5/)	(5/)	(5/)	(5/)	(5/)
Nebr.....	22	134	90	4,905	(5/)	(5/)	(5/)	(5/)	(5/)	(5/)
N. Y.....	6,427	29,572	18,024	2,554,928	395.53	86.60	+8.9	+1.2	-64.4	-64.4
Ohio.....	10,682	49,447	28,597	2,304,828	215.77	46.61	+4.3	-12.3	-20.5	-2.1
Okl.....	107	536	314	25,403	239.36	47.38	+2.9	+4.3	-10.7	-3.4
Ore.....	4,028	16,603	8,880	999,898	248.26	60.22	-1.5	+7.0	-58.7	-46.9
Pa.....	2,176	9,504	5,158	557,880	256.38	58.70	+7.6	+1.6	-31.4	+23.3
R. I.....	387	1,828	1,074	112,656	291.10	61.63	-2.9	+6.1	-36.0	-37.4
Utah.....	1,214	6,056	3,784	361,638	297.89	59.73	+3.7	+2.1	-34.6	-33.3
Vt.....	785	3,654	2,104	259,427	330.48	71.00	+9.8	+10.7	-44.8	-43.8
Wash.....	5,670	23,780	12,869	1,672,371	294.95	70.33	-1.1	-3.1	-13.1	-11.7
W. Va.....	831	4,049	2,581	176,509	210.00	43.10	-8	-9.9	-55.0	-56.3
Wis.....	1,662	8,058	4,741	682,457	410.42	84.49	+2.4	+6.9	-35.7	-19.1

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Amount includes \$213,000 representing grants for special needs in Massachusetts for the quarter April-June 1974. The average payments and percentage changes are affected accordingly.

4/ Program initiated January 1974.

5/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.

6/ Program reinstated October 1973.

7/ Payments for own months fluctuate noticeably due to the influence of retroactive payments.

Table 3.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, April 1974 ^{1/}

^{2/} Excludes vendor payments for medical care and cases receiving only such payments ^{3/}

State	Number of families	Number of recipients		Payments to recipients		Percentage change from--			
		Total ^{2/}	Children	Total amount	Average per--		March 1974 in--		April 1973 in--
					Family	Recipient	Number of recipients	Amount	
Total.....	99,911	455,400	275,315	\$28,729,652	\$207.55	\$63.09	-2.2	-3.6	-12.2
California.....	32,989	145,246	89,791	8,574,814	259.94	59.45	-3.7	-4.7	-21.6
Colorado.....	1,311	3,720	3,720	392,636	259.85	58.48	-4.0	-5.9	-3.4
Delaware.....	65	198	169	10,219	157.22	34.29	-2.6	-3.2	-37.7
Dist. of Col....	2,828	10,863	7,855	588,205	207.99	54.15	+2.1	+19.0	+35.2
Guam.....	1	6	4	270	(Q/)	(Q/)	(Q/)	(Q/)	(Q/)
Hawaii.....	626	2,815	1,584	228,981	265.78	81.36	+1.5	+5.2	-41.3
Illinois.....	12,516	63,005	38,595	4,109,914	328.37	65.23	-5.2	-6.6	-18.5
Iowa.....	110	283	283	37,375	339.77	74.45	+36.9	+28.4	(Q/)
Kansas.....	231	1,076	619	58,194	251.92	54.08	-8.0	-6.7	-45.4
Maryland.....	585	2,950	1,741	126,142	215.63	42.76	-9.3	-24.6	-36.7
Massachusetts...	2,038	9,127	5,312	622,920	305.65	68.25	+7.3	-21.6	-8.0
Michigan.....	12,217	58,997	34,676	4,261,521	348.82	72.23	+4.3	+4.1	+4.0
Minnesota.....	1,173	5,444	3,171	404,209	346.30	74.62	-3.3	-3.0	-32.1
Missouri.....	10	35	15	1,430	(Q/)	(Q/)	(Q/)	(Q/)	(Q/)
Nebraska.....	26	149	101	5,484	(Q/)	36.81	+11.2	+11.8	-52.1
New York.....	6,019	28,445	17,308	2,350,032	390.44	82.62	-3.8	-8.0	-8.7
Ohio.....	10,867	49,762	28,584	2,331,710	214.96	46.86	+6	+1.2	+1.7
Oklahoma.....	84	167	280	22,863	243.10	48.95	-13.9	-10.7	-46.6
Oregon.....	3,815	16,026	8,643	983,810	237.88	61.39	3.5	-1.6	+31.8
Pennsylvania...	2,220	9,628	5,196	577,090	260.31	60.02	+1.3	+5.6	-32.0
Rhode Island...	367	1,227	1,010	105,185	286.61	60.91	-5.5	-6.6	-18.3
Utah.....	1,156	5,796	3,632	350,271	303.00	60.43	-4.3	-3.1	-21.9
Vermont.....	862	4,044	2,361	286,191	334.33	71.26	+10.7	+11.1	+16.6
Washington.....	5,284	21,880	11,782	1,527,010	288.99	69.79	-8.0	-8.7	-7.3
West Virginia...	688	3,263	2,146	145,051	210.83	43.13	-16.9	-18.9	-53.9
Wisconsin.....	1,656	8,035	4,747	623,307	380.99	77.57	-3.3	-8.7	-13.2

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Average payment not computed on base of fewer than 50 families or recipient; percentage change on fewer than 100 recipients.

^{4/} No payments made in prior period.

^{5/} Program initiated January 1974.

^{6/} Program reinstated October 1972.

^{7/} Payments for some months fluctuate noticeably due to the influence of retroactive payments.

Table 3.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, May 1974 ^{1/}

^{2/}Excludes vendor payments for medical care and cases receiving only such payments^{3/}

State	Number of families	Number of recipients		Payments to recipients		Percentage change from--			
						April 1974 in--		May 1973 in--	
		Total ^{2/}	Children	Total amount	Average per--	Family	Recipient	Number of recipients	Amount
Total.....	94,762	432,294	259,336	\$27,109,440	\$62.08	\$62.72		-5.1	-5.6
California.....	30,594	134,598	81,947	7,857,562	256.83	58.41		-6.7	-8.4
Colorado.....	1,287	5,704	3,167	231,276	73.48	38.10		-13.0	-15.6
Delaware.....	1,577	2,566	1,453	331,216	162.60	36.20		-14.1	-16.7
Dist. of Col.....	2,932	11,168	8,064	596,328	304.68	32.40		-2.8	+1.4
Illinois.....	11,866	2,787	1,550	223,309	355.62	80.13		-1.0	-2.5
Missouri.....	59,659	36,389	20,577	3,678,831	326.89	64.59		-5.3	-5.6
Minnesota.....	1,133	522	277	35,375	314.62	68.13		-4.0	-4.8
New York.....	2,000	953	527	47,902	339.31	51.90		-14.2	-17.7
Pennsylvania.....	486	2,163	1,271	104,404	223.03	49.66		-26.0	-16.1
Rhode Island.....	2,078	9,539	5,435	681,474	318.32	70.83		-2.3	+6.2
Utah.....	13,208	58,952	34,644	4,250,609	348.16	72.10		-1.1	-3.3
Washington.....	1,103	3,120	2,934	379,201	343.79	74.06		-6.0	-6.6
West Virginia.....	17	32	16	1,302	(2/)	(2/)		(2/)	(2/)
Wisconsin.....	5,675	26,855	16,366	4,067	37.66	37.66		-27.5	-25.8
Wyoming.....	10,710	49,255	28,181	2,261,711	398.54	64.28		-5.7	-3.8
Alabama.....	83	418	285	2,504,860	214.01	46.79		-1.0	-1.2
Arizona.....	3,222	13,775	7,425	20,604	49.29	10.5		-10.5	-9.9
Arkansas.....	2,267	9,861	5,339	878,485	264.44	66.01		-14.4	-10.7
California.....	313	1,492	878	657,734	250.14	66.70		-2.4	+13.8
Colorado.....	1,066	5,401	3,390	83,790	267.70	56.16		-13.6	-20.3
Connecticut.....	911	4,281	2,481	326,397	306.19	60.43		-6.8	-6.8
Delaware.....	4,646	19,024	10,748	282,743	310.77	66.05		-4.9	-1.9
District of Columbia.....	566	2,856	1,813	1,236,498	266.14	65.00		-13.1	-19.0
Florida.....	1,579	7,805	4,624	201,66	40.20	40.20		-15.7	-21.4
Georgia.....				537,380	71.41	71.41		-2.9	-10.6

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

^{3/} Program initiated January 1974.

^{4/} Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.

^{5/} Program reinstated October 1973.

^{6/} Payments for some months fluctuate noticeably due to the influence of retroactive payments.

Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, June 1974 ^{1/}

^{2/}Excludes vendor payments for medical care and cases receiving only such payments^{3/}

State	Number of families	Number of recipients		Total amount	Payments to recipients		Percentage change from--			
		Total 2/	Children		Family	Recipient	May 1974 in--		June 1973 in--	
							Number of recipients	Amount	Number of recipients	Amount
Total.....	89,263	402,866	241,333	2/ 423,311,337	3/ \$286.74	2/ 522.83	-6.8	2/ -6.6	-16.5	2/ -10.0
California.....	27,848	127,017	75,532	7,216,962	259.16	59.13	-9.3	-6.2	-21.6	-18.8
Colorado.....	1,123	5,015	2,137	259,137	259.24	38.07	-12.1	-12.1	-11.6	-6
Delaware.....	47	213	135	7,472	67	35.52	-15.6	-17.2	-40.5	-40.3
Dist. of Col.....	2,960	11,276	6,104	596,580	201.55	53.13	+5	(U/)	+22.7	+25.7
Conn.....	15	15	9	755	(U/)	(U/)	(U/)	(U/)	(U/)	(U/)
Gen.....	567	2,552	1,438	201,620	355.59	79.00	-8.4	-9.7	-64.0	-62.8
Illinois.....	11,581	58,167	35,485	3,757,792	325.05	64.60	-2.5	-3.1	-23.6	-16.9
Indiana.....	113	512	286	31,997	283.15	62.69	-1.9	-10.1	(U/)	(U/)
Iowa.....	355	1,113	629	40,463	262.31	55.25	-20.3	-15.1	-67.0	-67.8
Kansas.....	647	1,984	1,150	96,261	215.33	48.52	-9.1	-11.2	-45.0	-41.1
Maryland.....	2,111	9,439	5,493	2/ 438,416	2/ 397.17	88.92	+1.1	2/ +26.7	-22.2	2/ -9.8
Massachusetts.....	11,763	56,937	33,555	2,051,536	345.13	71.20	-14.6	-4.5	+5.2	+12.9
Michigan.....	948	4,555	2,673	333,839	344.88	77.29	-11.0	-12.0	-26.5	-25.3
Minnesota.....	8	30	14	1,206	(U/)	(U/)	(U/)	(U/)	(U/)	(U/)
Missouri.....	21	82	42	4,489	67	37.31	+13.9	-67.8	-62.1	-62.4
Nebraska.....	4,560	22,161	13,203	38,721	78.75	78.75	-17.4	-22.8	-36.4	-23.8
New York.....	10,712	48,958	27,627	2,281,746	212.92	44.63	-6	-1.0	+1.5	+11.0
Ohio.....	76	32,071	17,258	253,466	49.19	49.19	-13.6	-13.8	-56.8	-66.1
Oklahoma.....	2,198	12,074	6,596	778,359	265.37	64.13	-12.0	-11.9	+13.6	+45.2
Oregon.....	2,196	9,517	5,126	615,634	280.09	64.69	-3.5	-6.4	-23.3	-24.9
Pennsylvania.....	2,196	9,517	5,126	75,303	317.73	66.52	-26.1	-10.1	-39.7	-30.7
Rhode Island.....	237	1,132	612	75,303	317.73	66.52	-26.1	-10.1	-39.7	-30.7
South Carolina.....	1,019	5,136	3,216	311,042	305.24	60.56	-4.9	-4.7	-37.3	-23.9
Texas.....	798	3,759	2,177	321,893	290.59	61.69	-11.6	-18.0	+15.1	+9.0
Vermont.....	4,138	16,808	9,035	1,182,288	285.71	70.34	-25.0	-4.4	-4.9	-40.1
West Virginia.....	424	2,128	1,353	211,899	211.89	42.22	-8.8	-21.2	-91.8	-80.3
Wisconsin.....	1,446	7,278	4,329	306,406	341.24	65.58	-8.8	-9.1	-23.2	-17.5

^{1/} Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.

^{2/} Includes as recipients the children and the mother or father of the child, or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered 1276,000 representing grants for special needs in Massachusetts for the quarter July-September 1974. The average payments and percentage changes are affected accordingly.

^{3/} Amounts not computed on basis of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.

^{4/} Average payment not computed on basis of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.

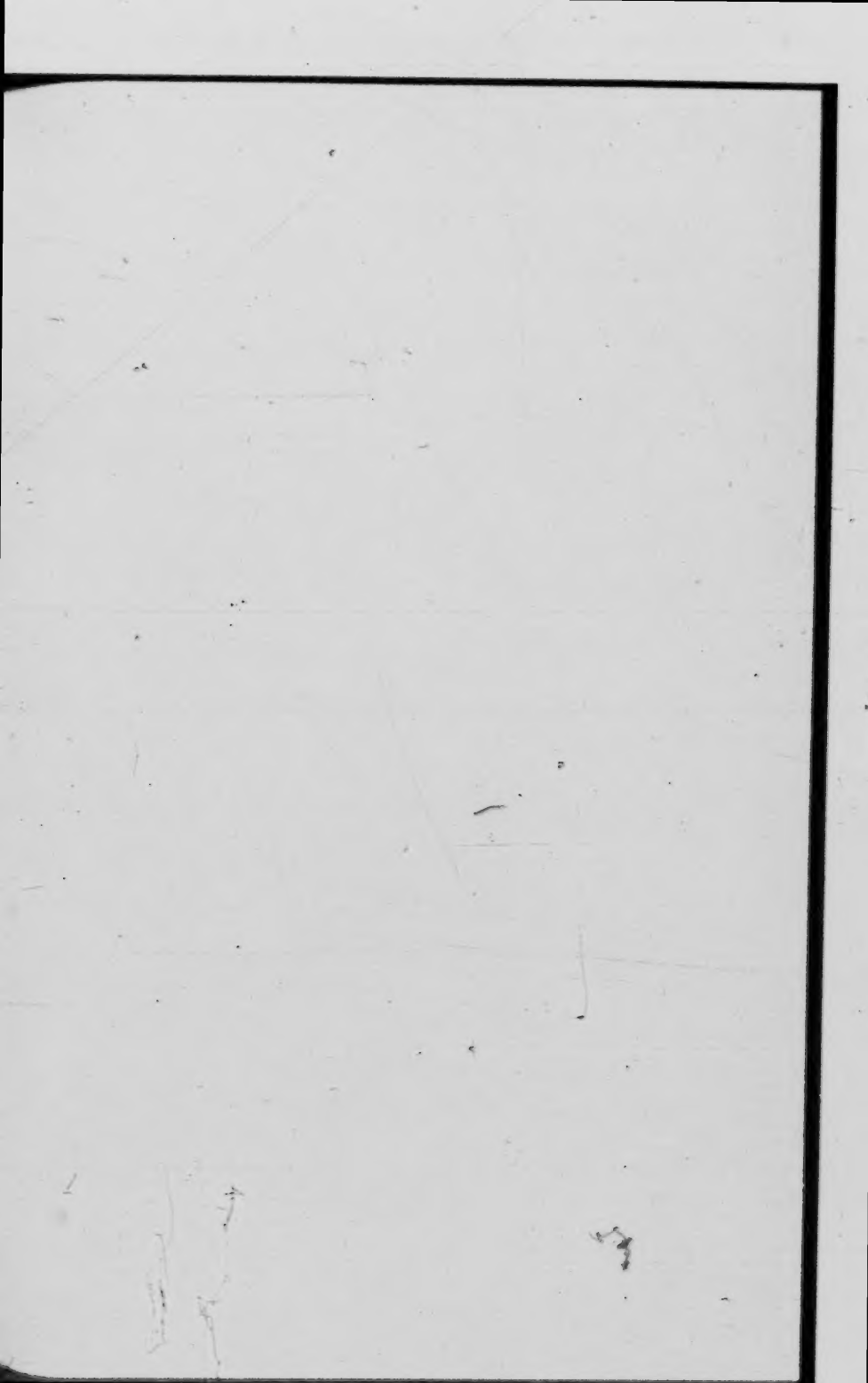
^{5/} Payments for less than 0.05 percent.

^{6/} Recipients made in prior periods.

^{7/} Program initiated January 1974.

^{8/} Program initiated October 1973.

^{9/} Payments for some months fluctuate noticeably due to the influence of retroactive payments.



In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-132

**CASPAR W. WEINBERGER, SECRETARY OF HEALTH,
EDUCATION, AND WELFARE, APPELLANT**

v.

JEAN GLODGETT, ET AL.

***ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF VERMONT***

REPLY BRIEF FOR THE APPELLANT

1. Appellees contend (Brief, p. 38) that "[t]he plain meaning of Section 607(b)(2)(C)(ii) is that Congress was concerned that a family could receive concurrent payments of unemployment compensation and AFDC-UF." To the extent this contention suggests that Congress was concerned with double payments, it finds no support in either the legislative history of the statute or in the history of the operation of the AFDC program.

In 1961, when AFDC was first extended to children of unemployed parents, states were given the option to deny in whole or part AFDC benefits to which a child was otherwise entitled if a parent received unemployment compensation. Where a state elected not to deny AFDC if unemployment compensation was received, the result was that unemployment compensation was treated like any other resource, *i.e.*, it was considered in establishing need. See

Department of Health, Education and Welfare, Handbook of Public Assistance Administration, Pt. IV, §3424.26 (1963); S. Rep. No. 165, 87th Cong., 1st Sess., p. 2. Thus, the risk of concurrent or double payments never existed.

To the extent appellees suggest that Congress intended to preclude concurrent (but not double) payments, their contention is correct, but it does not support their claim to relief. In 1968, when Congress replaced the optional provision with the mandatory bar, it sought to reestablish the traditional reliance on unemployment compensation as the primary source of assistance for the unemployed, and to insure that AFDC was available only as a program of last resort.

There is no dispute that at a minimum, in enacting the 1968 amendments, Congress intended that AFDC benefits be terminated if a father received unemployment compensation. Thus, the only question of statutory construction is whether Congress intended to give fathers an option to decline unemployment compensation. As shown in our main brief, the district court's conclusion that such an option exists is contrary to the structure of the Act, its legislative history, and consistent administrative construction.

We add only that the district court decision renders the mandatory bar provision a nullity and, in practical effect, assumes that Congress intended to discourage unemployed fathers from receiving unemployment compensation. That assumption is incorrect. In 1968 Congress was concerned with the escalating costs of the welfare program. It is inconceivable that Congress intended to exacerbate that problem by permitting the shifting of significant costs of assisting the unemployed from unemployment compensation programs to AFDC.

2. Appellees correctly point out that as the prevailing party below they are entitled to rely on any ground supported by the record in seeking affirmance of the district court judgment (Brief, p. 62). Appellees urge that if this Court concludes that the district court's construction of Section 607 is erroneous, it should then consider their constitutional claim. Although we have suggested that the case should be remanded for consideration of the constitutional issue, we are responding to appellees' arguments should this Court reach the question.

Appellees contend that the mandatory bar provision impermissibly discriminates against a class of children solely on the basis of the source of their father's income. Appellees' claim is one of underinclusiveness—that is, they argue that the mandatory bar provision constitutes invidious discrimination because children whose fathers receive unemployment compensation have their AFDC benefits terminated without regard to their "need" status.

Appellees recognize that the mandatory bar provision must be analyzed under the "rational basis" test which this Court has traditionally applied to review of welfare legislation. Under that test a statute must be upheld if the goals are legitimate and the legislative classification is rationally related to the accomplishment of the congressional purpose. See *Jefferson v. Hackney*, 406 U.S. 535; *Richardson v. Belcher*, 404 U.S. 78, 81; *Dandridge v. Williams*, 397 U.S. 471.

Implicit in appellees' constitutional claim are the premises that either it is in fact the goal of the AFDC program to provide benefits to all persons on the basis of need, or, alternatively, that Congress is constitutionally obligated to operate the program in that fashion. Neither premise is correct.

AFDC has never been and is not now a comprehensive public assistance program. From its inception in 1935 until 1961 AFDC was not available to families with unemployed fathers. Although the program was so extended in 1961, state participation was not made mandatory, and at the present time only 25 states have AFDC-UF programs. Moreover, AFDC has never been available to families with an employed father even though a family's income level may fall below the need standard applicable to AFDC programs. See 42 U.S.C. 606(a) and 607(b); see also *Henry v. Betit*, 323 F. Supp. 418 (D. Alaska).

Although the goal of the AFDC program is to assist families who are in need, confronted with a finite amount of funds available for this purpose, Congress has chosen to allocate public assistance to those classes of families who are least able to change their circumstances. Historically, Congress has relied on minimum wage laws and collective bargaining, rather than AFDC, to assist the employed (*Macias v. Finch*, 324 F. Supp. 1252 (N.D. Cal.), affirmed *sub nom. Macias v. Richardson*, 400 U.S. 913), and on unemployment compensation as the primary means of assisting families with an unemployed father. See our main brief, pp. 19-20. Although that distinction was blurred in 1961 when AFDC was extended to families with unemployed fathers, it was essentially reestablished in 1968 with the enactment of the mandatory bar provision.

If equal protection principles require the extension of AFDC benefits to families where the father receives unemployment compensation, it is difficult to see why logically they do not also require the extension of AFDC to families where the father is employed—in short, they would require the development of a comprehensive public assistance program. See *Geduldig v. Aiello*, 417 U.S. 484, 495. But we submit that adoption of a comprehensive public assistance program is not consti-

tutionally required. The desirability of such a course of action is a matter for legislative determination and requires a resolution of conflicting interests and policies as to which there has historically been no consensus. See generally Moynihan, *The Politics of a Guaranteed Income* (1973).

Given the congressional goal of providing public assistance within a framework of limited funds, the exclusion of families where an unemployed father receives unemployment compensation has a rational basis. It is consistent with the historical reliance on unemployment compensation as the first line of defense for the unemployed, and, as recognized in *Burr v. Smith*, 322 F. Supp. 980, 985 (W.D. Wash.), affirmed, 404 U.S. 1027, unemployment compensation benefits promote attachment to the labor force, and such benefits " * * * which [are] temporary in nature, may act as a greater incentive for the unemployed to seek new employment than the receipt of welfare assistance." In many cases unemployment compensation benefits will approximate or exceed AFDC benefit levels and where unemployment compensation is inadequate it may be supplemented by other state assistance programs.¹ Finally, as pointed out in our main brief, states may upgrade their unemployment compensation and assistance programs.² Moreover, the exclusion is only temporary because of the limited duration of unemployment compensation benefits.³ Upon the expiration

¹Vermont has such an assistance program. As noted in our main brief, however, the level of benefits available is not shown in this record.

²As appellees' brief points out (App. B, p. 1b), since 1972 14 of the 25 states that have both unemployment compensation and AFDC-UF programs have upgraded their unemployment compensation programs. See also *Burr v. Smith*, *supra*, 322 F. Supp. at 982, n. 1.

³Under Vermont law, unemployment benefits are payable for a maximum of 26 weeks unless, in certain circumstances, they are extended for 39 weeks. See 21 V.S.A. 1340, 1421. In addition, under the Emergency Unemployment Act of 1974, Pub. L. 93-572, 88 Stat. 1869, under certain conditions, an additional 13 weeks (for a maximum of 52) of benefits, payable from federal funds, is available.

of such benefits, if the father remains unemployed, AFDC benefits are restored, assuming other eligibility conditions are satisfied.

We do not contend that the mandatory bar is the wisest or most socially desirable policy that could be devised, but we do submit that its rejection, on constitutional grounds, would entail a consideration of factors that this Court has repeatedly held inappropriate for judicial resolution. See, e.g., *Jefferson v. Hackney*, *supra*, 406 U.S. at 541; *Dandridge v. Williams*, *supra*, 397 U.S. at 487; see also Note, *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065, 1082-1087, 1192 (1969).

For the foregoing reasons, and for the reasons set forth in our main brief, the judgment of the district court should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

IRVING JAFFE,
Acting Assistant Attorney General.

WILLIAM L. PATTON,
Assistant to the Solicitor General.

LEONARD SCHAITMAN,
ANTHONY J. STEINMEYER,
Attorneys.

JOHN B. RHINELANDER,
General Counsel,

GALEN D. POWERS,
Assistant General Counsel,

MICHAEL H. COOK,
Attorney,
Department of Health, Education, and Welfare.

MARCH 1975.

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-132

**CASPAR W. WEINBERGER, SECRETARY OF HEALTH,
EDUCATION, AND WELFARE, APPELLANT**

v.

JEAN GLODGETT, ET AL.

***ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF VERMONT***

SUPPLEMENTAL BRIEF FOR THE APPELLANT

During oral argument in the above cases on March 24 and 25, 1975, the question was raised whether an appeal from an order of a three-judge district court granting an injunction on non-constitutional grounds lies to this Court rather than to the court of appeals. The Court authorized the parties to file supplemental briefs on this issue. We conclude that appeal in such cases should lie to the court of appeals, and that the judgment of the district court should be vacated and the cases remanded to that court for entry of a fresh decree to permit appeals to the Court of Appeals for the Second Circuit.

Section 1253 of Title 28 provides for a direct appeal to this Court from an order granting or denying an interlocutory or permanent injunction in any civil action required to be "heard and determined" by a three-judge district court. Sections 2281 and 2282 of Title 28

provide that only a three-judge district court may enjoin the enforcement, operation or execution of a federal or state statute as unconstitutional. Although the latter provisions literally require a three-judge court only where an injunction is granted, this Court had held that where a three-judge court was properly convened, an appeal from its final judgment lies only to this Court without regard to the basis upon which the three-judge court decided the case. See, e.g., *Brotherhood of Engineers v. Chicago, R.I. & P.R. Co.*, 382 U.S. 423; *Florida Lime & Avocado Growers v. Jacobsen*, 362 U.S. 73; see also *Hagans v. Lavine*, 415 U.S. 528, 543 (dictum).

Two recent decisions of this Court, however, have modified this principle. *Gonzalez v. Employees Credit Union*, 73-858, decided December 10, 1974, held that an order of a three-judge district court dismissing, because of plaintiffs lack of standing, a complaint seeking to enjoin a state statute as unconstitutional, is not directly appealable to this Court. The Court held that "when a three-judge court denies a plaintiff injunctive relief on grounds which, if sound, would have justified dissolution of the court as to that plaintiff, or a refusal to request the convention of a three-judge court *ab initio*, review of the denial is available only in the Court of Appeals" (slip op. 11). The Court pointed out (*id.* at 8) that the purpose of "the three-judge court apparatus * * * [is] to save state and federal statutes from improvident doom, on constitutional grounds, at the hands of a single federal district judge"; and that "only a narrow construction" of "[t]he words of §1253 governing this Court's appellate jurisdiction over orders denying injunctions * * * is consonant with the overriding policy, historically encouraged by Congress, of minimizing the mandatory docket of this Court in the interests of sound

judicial administration" (footnote omitted). The Court stated (*ibid.*, emphasis in original): "Whether this jurisdiction be read broadly or narrowly, there will be no impact on the underlying congressional policy of ensuring this Court's swift review of three-judge court orders that *grant* injunctions."

In *Gonzalez* the Court left open the question whether Section 1253 "should be read to limit our direct review of three-judge court orders denying injunctions of those that rest upon resolution of the constitutional merits of the case" (slip op. 9). In *MTM, Inc. v. Baxley*, 73-1119, decided March 25, 1975, the Court resolved that question affirmatively. It pointed out (slip op. 5) that

* * * the congressional policy behind the three-judge court and direct review apparatus—the saving of state and federal statutes from improvident doom at the hands of a single judge—will not be impaired by a narrow construction of §1253. A broad construction of the statute, on the other hand, would be at odds with the historic congressional policy of minimizing the mandatory docket of this Court in the interest of sound judicial administration. * * *

"In light of these factors" the Court concluded that "a direct appeal will lie to this Court under §1253 from the order of a three-judge federal court denying interlocutory or permanent injunctive relief only where such order rests upon resolution of the merits of the constitutional claim presented below" (*id.* at 5-6).

We submit that the same factors also lead to the conclusion that direct appeal from an order of a three-judge district court granting an injunction lies to this Court only where that order rests on constitutional grounds. There is nothing in the language of Section 1253 that warrants a distinction between orders denying and

orders granting injunctions. Furthermore, "the interest of sound judicial administration" (*id.* at 5) similarly dictates against direct appeal to this Court from orders granting injunctions on non-constitutional grounds.

If the plaintiffs in the present case had raised no constitutional issues but only the statutory questions that the district court decided, a single judge would have decided them, and his decision would have been appealable only to the court of appeals. In terms of the underlying policy of Section 1253—avoiding invalidation of federal and state statutes by a single federal district judge on "constitutional grounds" (*Gonzalez, supra*, slip op. at 8) and "minimizing the mandatory docket of this Court" (*ibid.*)—there is no greater reason why appeals from district court orders granting injunctions should go directly to this Court than appeals from such orders denying injunctions, which were held appealable only to the courts of appeals in *MTM*. The reference in *Gonzalez* to the "underlying congressional policy of ensuring this Court's swift review of three-judge court orders that *grant* injunctions" (*ibid.*, emphasis in original) should be interpreted, in light of the Court's statement in that case that the purpose of the "three-judge court apparatus" is to prevent a single federal district judgment from invalidating state and federal statutes "on constitutional grounds" (*ibid.*), to refer to such orders granting injunctions on constitutional grounds.

"[I]n the area of statutory three-judge court law the doctrine of *stare decisis* has historically been accorded considerably less than its usual weight," and "in struggling to make workable sense" of these "awkwardly drafted" "procedural statutes," "the Court has not infrequently been induced to retrace its steps." *Gonzalez, supra* (slip op. 5-6, footnote omitted). It would be con-

sistent with the congressional purposes of these statutes and the Court's treatment of them for it now to hold that orders of three-judge district courts granting injunctions on non-constitutional grounds, like such orders denying injunctions on those grounds, should be reviewed by the courts of appeals and not directly by this Court.

If the Court agrees with this submission, the judgment of the district court should be vacated and the cases remanded to that court for entry of a fresh decree to permit an appeal to the court of appeals, as was done in *Gonzalez* (slip op. 11-12) and *MTM* (slip op. 6).

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

IRVING JAFFE,
Acting Assistant Attorney General.

WILLIAM L. PATTON,
Assistant to the Solicitor General.

ANTHONY J. STEINMEYER,
Attorney.

APRIL 1975.

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PHILBROOK, COMMISSIONER, DEPARTMENT
OF SOCIAL WELFARE *v.* GLODGETT ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

No. 73-1820. Argued March 24-25, 1975—Decided June 9, 1975*

Under the Aid to Families with Dependent Children (AFDC) program of the Social Security Act (Act), the term "dependent child" was expanded to include children whose deprivation was caused by a parent's unemployment. Section 407 (b) (2) (C) (ii) of the Act, as amended in 1968, makes this expanded definition applicable only if a state plan under the AFDC program denies aid to a dependent child so defined "with respect to any week for which such child's father receives unemployment compensation." Vermont, to qualify for federal funding under this unemployed-father program, promulgated a regulation under its participating Aid to Needy Families with Children (ANFC) program defining an "unemployed father" as one who is, *inter alia*, out of work, provided "[h]e is not receiving Unemployment Compensation during the same week as assistance is granted." Appellees, who are parents and children of Vermont families whose ANFC assistance was terminated or denied because the fathers were receiving unemployment compensation, filed suit against appellant Commissioner of the Vermont Department of Social Services and appellant Secretary of Health, Education, and Welfare to enjoin enforcement of the federal statute and state regulation. Holding that it had jurisdiction over the parties under 28 U. S. C. § 1343 (3), and construing § 407 (b) (2) (C) (ii) as making actual payment of, rather than mere eligibility for, unemployment compensation the disqualifying factor for AFDC benefits, a three-judge

*Together with No. 74-132, *Weinberger, Secretary of Health, Education, and Welfare v. Glodgett et al.*, also on appeal to the same court.

Syllabus

District Court held that the Vermont regulation could not be applied so as to conflict with this construction of the federal statute, and entered an injunction to this effect. *Held*:

1. The Vermont regulation, as applied to exclude unemployed fathers who are merely eligible for unemployment compensation from receiving ANFC benefits, impermissibly conflicts with § 407 (b)(2)(C)(ii), as correctly interpreted by the District Court. As evidenced by that provision's legislative history, Congress did not intend the provision's coverage to be at the State's discretion once it elected to participate. Pp. 6-12.

2. This Court will not inquire into the question whether the District Court had jurisdiction over appellant Secretary but will make an exception to the general rule that this Court has a duty to so inquire, where the question has been inadequately briefed, the substantive issue has been decided in the State's case, and the Secretary has stated he will comply with the District Court decision on the statutory issue if it is affirmed. The exercise of the District Court's jurisdiction over the Secretary has resulted in no adjudication on the merits that could not have been just as properly made without the Secretary, and in no issuance of process against the Secretary which he has properly contended to be wrongful before this Court. Pp. 12-15.

386 F. Supp. 211, No. 73-1820, affirmed; No. 74-132, dismissed.

REHNQUIST, J., delivered the opinion for a unanimous Court.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 73-1820 AND 74-132

Paul R. Philbrook, Etc.

Appellant,

73-1820

v.

Jean Glodgett et al.

Caspar W. Weinberger, Secretary of Health, Education, and Welfare, Appellant,

74-132

v.

Jean Glodgett et al.

On Appeals from the United States District Court for the District of Vermont.

[June 9, 1975]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In these consolidated appeals we are called upon to construe a provision of the Social Security Act of 1935 (Act), as amended, and to ascertain whether a Vermont welfare regulation impermissibly conflicts with that provision. A three-judge District Court held that it did, 368 F. Supp. 211 (Vt. 1973), and we noted probable jurisdiction in the appeal of appellant Philbrook, Commissioner of the Vermont Department of Social Services, in No. 73-1820, and postponed consideration of the question of jurisdiction in the appeal of appellant Weinberger, Secretary of the Department of Health, Education, and Welfare, in No. 74-132. 419 U. S. 963 (1973). Philbrook's appeal presents only the question of whether the Vermont welfare regulation in question conflicts with § 407 (b)(2)(C)(ii) of the Act, as amended, 42 U. S. C.

§ 607 (b)(2)(C)(ii), while the Secretary's appeal presents the additional issue of whether the District Court correctly concluded that it had jurisdiction over the Secretary under the doctrine of pendent jurisdiction.

I

In Title IV of the Social Security Act of 1935, 49 Stat. 627, Congress enacted the Aid to Dependent Children program,¹ through which federal funds would be granted to qualifying States in order to provide aid to dependent children. The term "dependent child" was originally defined to include only children whose deprivation was caused by "the death, continued absence from the home, or physical or mental capacity of a parent,"² but in 1961 Congress expanded the definition of dependent child to include children whose deprivation was caused by the unemployment of a parent.³ This program was enacted on an experimental basis⁴ and gave States the authority to define "unemployment" and to deny AFDC benefits in whole or in part if the unemployed parent received unemployment compensation during the relevant period. In 1968 Congress elected to make the

¹ The name of the program was changed in 1962 to "Aid and Services to Needy Families with Children," and the name of the assistance provided thereunder became "Aid to Families with Dependent Children," (AFDC). Pub. L. 87-543, 76 Stat. 185. Vermont has elected to call its participating program Aid to Needy Families with Children (ANFC).

² Section 406 (a) of the Act, 49 Stat. 629. See generally *Burns v. Alcala*, 420 U. S. — (1975).

³ 75 Stat. 75. See 1961 Public Papers of the Presidents of the United States 46-47; H. R. Rep. No. 28, 87th Cong., 1st Sess. (1961); S. Rep. No. 165, 87th Cong., 1st Sess. (1961); H. Conf. Rep. No. 307, 87 Cong., 1st Sess. (1961).

⁴ The 1961 legislation was scheduled to expire on June 30, 1962, but it was extended for a five-year period in 1962, 76 Stat. 193, and for one more year in 1967, 81 Stat. 94.

unemployed parent program permanent,⁵ but in response to problems that had arisen during the trial period, Congress retracted some of the authority that had formerly been delegated to the States.⁶ Under these and other changes that also became effective in 1968,⁷ the expanded

⁵ 81 Stat. 882. H. R. Rep. No. 544, 90th Cong., 1st Sess., 17, 107-109, 175-176 (1967); S. Rep. No. 744, 90th Cong., 1st Sess. (1967); H. Conf. Rep. No. 1030, 90th Cong., 1st Sess (1967).

⁶ Under the 1961 legislation, the States had adopted such varying definitions of "unemployment" that uniform administration of the program became impossible; in some instances the States had adopted such a broad definition as to have "gone beyond anything that the Congress originally envisioned." H. R. Rep. No. 544, *supra*, at 108. See Statement of Wilbur J. Cohen, Undersecretary of the Department of Health, Education, and Welfare, Hearings on H. R. 12080, Before the Senate Comm. on Finance, 90th Cong., 1st Sess., 268-269 (1967). Congress responded by enacting a federal definition of "unemployment" which required States to include fathers who had "a substantial connection with the work force," H. R. Rep. No. 544, *supra*, at 17, and exclude families if the unemployed father "receives unemployment compensation under an unemployment compensation law of a State or of the United States." 81 Stat. 883. The Senate had preferred to retain the option giving*the States the discretion to deny AFDC benefits to families receiving unemployment compensation, S. Rep. No. 744, *supra*, at 28, but receded at conference, H. Conf. Rep. No. 1030, *supra*, at 57.

Congress also expressed its displeasure with the State practice which had made "families in which the father is working but the mother is unemployed eligible," H. R. Rep. No. 544, *supra*, at 108, and restricted the program to children of unemployed fathers.

⁷ In the next session the Senate tried again to modify the mandatory exclusion of § 407 (b). See n. 6, *supra*. Under the major modifications made at the beginning of 1968, a family that received unemployment compensation for any part of a month was automatically disqualified from AFDC assistance for the entire month. The Senate sought to restore to the States the option to permit or deny AFDC assistance to families in this situation, S. Rep. No. 1014, 90th Cong., 2d Sess., 9 (1968). A compromise was reached in Conference by which the mandatory exclusion was retained in concept but relaxed in application: a father receiving unemploy-

definition of "dependent child," § 407 (a) of the Act, applies only if participating States deny aid

"to families with dependent children to any child or relative specified in subsection (a) of this section—

"(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States." § 407 (b)(2)(C) (ii) of the Act, 42 U. S. C. § 607 (b)(2)(C)(ii).

To qualify for funding under this unemployed-father program, Vermont promulgated Welfare Regulation 2333.1, which provides in relevant part:

"An 'unemployed father' is one whose minor children are in need because he is out of work, is working part-time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that

"(3) He is not receiving Unemployment Compensation during the same *week* as assistance is granted."

Appellees are the parents and minor children of Vermont families whose ANFC assistance was terminated or whose applications for assistance were rejected because the fathers were receiving unemployment compensation; in each instance the amount of money received by the family in unemployment compensation was less than would have been received under the ANFC program. Appellees filed suit against Commissioner Philbrook and

ment compensation during any month would be denied AFDC assistance but only with respect to the weeks for which unemployment compensation was received. 82 Stat. 273. See H. Conf. Rep. No. 1533, 90th Cong., 2d Sess., 49 (1968).

Secretary Weinberger to enjoin the enforcement of the federal statute and state regulation. The three-judge court, concluding that it had jurisdiction over the parties by virtue of 28 U. S. C. § 1343 (3), concluded "from the language of the statute that the disqualifying factor is actual payment, rather than the mere eligibility for unemployment compensation." 368 F. Supp., at 217. Under this construction of § 407 (b) (2) (C) (ii) of the Act, 42 U. S. C. § 607 (b) (2) (C) (ii), a father who otherwise qualified had an option to receive either an unemployment compensation check or ANFC assistance, whichever was greater, and the Vermont regulation could not be applied so as to conflict with this construction of the federal statute. An injunction to this effect was entered, and both the state and federal parties have appealed.*

* At oral argument a question arose regarding the jurisdiction of this Court over the appeal, 28 U. S. C. § 1253, and the parties have filed supplemental briefs on this point. On authority of *Gonzalez v. Automatic Employees Credit Union*, 419 U. S. 90 (1974), and *MTM v. Bazley*, 420 U. S. — (1975), appellant Weinberger contends that any appeal from the District Court's judgment should have been taken to the Court of Appeals; appellant Philbrook and appellees contend that the appeals are properly before this Court.

In *Hagans v. Lavine*, 415 U. S. 528 (1974), this Court indicated that it was the preferred practice for a single judge, when presented with both statutory and constitutional grounds for decision, to resolve the statutory claim before convening a three-judge court. The District Court in this case was unable to proceed in that manner because appellees raised only constitutional contentions in their complaint, App. 10, and raised their statutory contention, for the first time, at oral argument before the three-judge court. Tr. of Oral Arg. before the United States District Court for the District of Vermont 42-44 (March 5, 1973). Appellant Weinberger urges us to reconsider our decision in *Engineers v. Chicago, R. I. & P. R. Co.*, 382 U. S. 423 (1966), in which we held that, if a three-judge court is convened and decides a case on statutory grounds, the judgment may be appealed to this Court under 28 U. S. C. § 1253, but we decline to do so.

II

The appellants do not contest, as indeed they could not, that § 407 (b)(2)(C)(ii) speaks in terms of a "father [who] receives unemployment compensation" rather than a "father [who] is eligible to receive unemployment compensation." They do contend, however, that the District Court's construction of that section is wholly at odds with the premise underlying the AFDC program and with the approach to non-AFDC resources dictated by § 402 (a)(7) of the Act, 42 U. S. C. § 602 (a)(7). "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *United States v. Heirs of Boisdore*, 8 How. 113, 122 (1850). *Richards v. United States*, 369 U. S. 1, 11 (1962); *Chemehuevi Tribe of Indians v. FPC*, — U. S. —, — (1975). Our objective in a case such as this is to ascertain the congressional intent and give effect to the legislative will. The language of § 407(b)(2)(C)(ii) certainly leans toward the construction adopted by the District Court, but "[i]t is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of of its makers." *Church of the Holy Trinity v. United States*, 143 U. S. 457, 459 (1892).

In order to qualify for federal assistance under the AFDC program, a state plan must "provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children." § 402 (a)(7) of the Act, 42 U. S. C. § 602 (a)(7). Further force to this statutory command has been applied by regulations requiring state agencies to "carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state

of availability." 45 CFR § 233.20 (a)(3)(ix). It flies in the face of this statutory scheme, argue appellants, to construe a provision of the same Title so as to permit a person to decline resources, for which he is eligible, in order to qualify for AFDC assistance. See *Shea v. Vialpando*, 416 U. S. 251 (1974). This anomaly is compounded by the violence done to the intended operation of unemployment compensation programs by the District Court's construction. Unemployment compensation programs, financed by employer contributions, are intended to operate without regard to need and be available to a recipient as a matter of right. See *California Department of Human Resources Development v. Java*, 402 U. S. 121 (1971). The appellants contend that AFDC should not be available when unemployment compensation, "the first line of defense," can be obtained.*

An argument based on intersectional harmony might have considerable force in other circumstances, but we find it unpersuasive as applied to appellants' case. Under § 402 (a)(7), an applicant's other income and resources are taken into account in determining the applicant's need. If the amount "is less than the predetermined statewide standard of need, the applicant is eligible for participation in the program and the amount of the assistance payments will be based upon that differ-

* Appellant Philbrook also argues that the District Court's construction operates "to shift drastically the burden of supporting families of unemployed fathers from the unemployment compensation program to the AFDC program." Brief for Appellant Philbrook, at 27. Such a shift from private sector to public sector financing distorts the intended relationship between the unemployment compensation and AFDC programs, and gives private employers a windfall gain since their financial obligation under the unemployment compensation program is a function of amounts paid out in claims. *Ibid.*

ence." *Shea v. Vialpando*, 416 U. S., at 254. If § 407 (b)(2) had been intended to fit smoothly into the AFDC program, then assistance payments should be *reduced* by the amount of unemployment compensation received by a father; this much the federal appellants concede.¹⁰ But Congress has expressly provided otherwise: receipt of unemployment compensation results in *termination* of AFDC benefits. The appellants are simply incorrect when they characterize their construction of § 407 (b)(2)(C)(ii) as consistent with the overall pattern of the AFDC program while assailing the District Court's interpretation as fundamentally disruptive; the fact of the matter is that neither construction is harmonious with the program's general approach to income and resources.

Appellants contend that the legislative history of the Social Security Amendments of 1968 support their position that "an unemployed father would be required to exhaust the unemployment compensation resource" before becoming entitled to receive AFDC assistance.¹¹ They rely upon a statement in the Conference Report as proof that when Congress used the term "receives" in § 407 (b)(2)(C)(ii) it intended to include within that

¹⁰ Brief for Appellant Weinberger, at 19 n. 6.

¹¹ Brief for Appellant Weinberger, at 21. The Government concedes that Congress did not intend AFDC assistance to be terminated immediately upon a father's eligibility for unemployment compensation. Congress recognized that there was a delay between application for unemployment compensation and receipt of the first check. During this period, even under the Government's construction, AFDC assistance is available. The Government's position is that a person who is eligible for unemployment compensation must take the steps necessary to receive such payments and, upon receipt, AFDC terminates. A father may not, in the Government's opinion, decline unemployment compensation or refuse to apply for such compensation when he is eligible. Brief for Appellant Weinberger, at 16-17, n. 4.

term persons who were eligible to receive unemployment compensation:

"Section 407 of the Social Security Act, as amended by section 203 (a) of the House bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to exclude fathers who do not have 6 or more quarters of work in any 13-calendar-quarter period ending within one year prior to the application for aid, and fathers who receive (*or are qualified to receive*) any unemployment compensation under State law.

"The Senate amendments removed these exclusions, and restored the provision of present law under which a State may at its option wholly or partly deny AFDC for any month where the father receives unemployment compensation during the month. . . .

"The Senate recedes . . ." H. R. Rep. No. 1030, 90th Cong., 1st Sess., 57 (1967) (emphasis added).

We have carefully reviewed the context of that statement in view of the positions of the House and Senate on § 407, and we agree with appellees that the above-quoted language is ambiguous at best. It seems more likely that the Conference Committee was referring to § 407 (b)(1)(C) of the Act¹² than to § 407 (b)(2)(C)

¹² Section 407 (b)(1) of the Act, 42 U. S. C. § 607 (b)(1):

"(b) The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title—

"(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) in this section when—

"(A) such a child's father has not been employed (as determined in accordance with standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

"(B) such father has not without good cause, within such period

(ii). Although both Houses of Congress agreed in 1968 that a federal definition of unemployment was necessary, they disagreed about the considerations that should be embodied in that definition. The House sought to limit participation under the unemployed father provision to fathers who had "a substantial connection with the work force." H. R. Rep. No. 544, 90th Cong., 1st Sess., 17 (1967).

"[I]t is the intent of your committee to exclude from the program those fathers who have not been in the labor force, or whose attachment to the labor force has been casual." *Id.*, at 108.

Although the Senate and the Administration did not favor requiring a substantial connection with the work force as a condition for inclusion under the unemployed father program,¹³ the House version prevailed at Conference. In implementing the House standard, Congress demonstrated an awareness of the difference between receipt of unemployment benefits and eligibility for such benefits. In defining the requisite prior attachment to

(of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment, and

"(C)(i) such father has 6 or more quarters of work (as defined in subsection (d)(1) of this section) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under an unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d)(3) of this section) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid;"

¹³ S. Rep. No. 744, *supra*, at 28; Statement of Undersecretary Cohen, *supra*, n. 6, at 269.

the employment market, Congress included fathers who had

"6 or more quarters of work . . . in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) . . . received unemployment compensation under an unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d)(3) of this section) for unemployment compensation . . . , within one year prior to the application for such aid." § 407 (b)(1)(C) of the Act, 42 U. S. C. § 607 (b)(1)(C).¹⁴

That Congress was not quite as discriminating in § 407 (b)(2)(C)(ii) conveys a good deal about its intent. It seems to us that the section from the Conference Report relied upon by appellants probably was directed to § 407 (b)(1)(C)(ii) rather than to the section at issue in these appeals.

The District Court correctly concluded "that a family eligible for ANFC benefits under section 607 can be excluded only for each week in which unemployment compensation is actually received by the father." 368 F. Supp., at 217. If, as appellants contend, § 407 (b)(2)

¹⁴ Section 407 (d)(3) of the Act, 42 U. S. C. § 607 (d)(3):

"(d) For purposes of this section—

"(3) an individual shall be deemed qualified for unemployment compensation under the State's unemployment compensation law if—

"(A) he would have been eligible to receive such unemployment compensation upon filing application, or

"(B) he performed work not covered under such law and such work, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such unemployment compensation upon filing application."

(C)(ii) is inconsistent with the general scheme of the AFDC program or works to shift costs from the private to the public sector in contravention of prudent resource management, it is the legislative branch to which appeals for modification must be directed.

With the federal standard of eligibility thus understood, it is apparent that the Vermont definition of "unemployed father," which has been applied to exclude unemployed fathers who are eligible for unemployment compensation, conflicts with § 407 (b)(2)(C)(ii). Vermont "may not deny aid to persons who come within it in the absence of a clear indication that Congress meant the coverage to be optional." *Burns v. Alcala*, 420 U. S., at —; *King v. Smith*, 392 U. S. 309 (1968); *Townsend v. Swank*, 404 U. S. 282 (1971); *Carleson v. Remillard*, 406 U. S. 598 (1972). See also *New York State Dept. of Social Services v. Dublino*, 413 U. S. 405, 421-422 (1973). An important purpose of the 1968 amendments was to eliminate the variations in state definitions of unemployment, see n. 6, *supra*, and the Congress twice turned back attempts by the Senate to restore to States discretion in the coverage of the program. In these circumstances we find that Congress did not intend the coverage of § 407 to be optional once a State elected to participate. That portion of the judgment appealed from in No. 73-1820 is affirmed.

III

The District Court held that 28 U. S. C. § 1343 (3) afforded jurisdiction over the Secretary under principles of pendent jurisdiction. We have previously characterized this question as "subtle and complex . . . with far-reaching implications." *Moor v. County of Alameda*, 411 U. S. 693, 715 (1973). See also *Christian v. New York Department of Labor*, 414 U. S. 614, 617 n. 3 (1974). This issue is the first of the "Questions

Presented" in the Secretary's brief on the merits, but while the section of that brief devoted to argument does characterize the issue as "difficult and complex," it concludes that we need not decide the question. The Secretary reasons that if we rule in his favor on the merits of the statutory question, which he presents as the second question presented by this appeal and which is identical to the question presented by appellant Philbrook, the case should be remanded so that the District Court may decide appellees' constitutional challenges to the statute as herein construed; in that event the Secretary advises that "the government intends to end the jurisdictional controversy by filing a motion to intervene." Brief for Appellant Weinberger, at 13. On the other hand, the Secretary tells us that if we agree with the District Court and disagree with him on the merits of the statutory question, as to which jurisdiction over the state defendant was properly invoked, "the jurisdictional question with respect to the Secretary would become inconsequential since the Secretary as well as the State would, of course, administer the statute in accordance with this Court's interpretation." *Ibid.*

We do not believe that the Secretary's treatment of his role in this appeal, which seems cast more in terms of an *amicus curiae* than as a party challenging jurisdiction, provides an acceptable resolution of this question. The Secretary's representation that he intends to abide by this Court's construction of the statute on the State's appeal does not in any strict sense of the word render moot the dispute between him and appellees. We are left therefore with a "subtle and complex question with far-reaching implications" going to the jurisdiction of the District Court over the Secretary, which was resolved by the District Court in favor of jurisdiction, but that has been inadequately briefed by the Secretary. Supreme Court Rule 40 (g).

Failure to comply with applicable Rules of this Court may result in the dismissal of an appeal of the defaulting party. *Sweezy v. New Hampshire*, 354 U. S. 234, 236 (1957); *Slagle v. Ohio*, 366 U. S. 259, 264 (1961); *Raley v. Ohio*, 360 U. S. 423, 435 (1959). Our only hesitancy in applying this principle to the Government's appeal arises because the issue goes to the jurisdiction of the District Court over the federal party, and we have repeatedly held that we must take note of want of jurisdiction in the District Court even though neither party has raised the point. *Cutler v. Rae*, 7 How. 729, 731 (1849); *Mitchell v. Maurer*, 293 U. S. 237, 244 (1934); *Clark v. Gray Inc.*, 306 U. S. 583, 588 (1939).

Application of the general rule that this Court has a duty to inquire into the jurisdiction of the District Court would require that we address a complex question of federal jurisdiction notwithstanding the absence of substantial aid from the briefs of either of the parties. We believe, however, that the unusual context in which this appeal comes to us permits an exception to this general rule. Here the substantive issue decided by the District Court would have been decided by that court even if it had concluded that the Secretary was not properly a party to the suit, since appellant Philbrook was clearly a proper party under 28 U. S. C. § 1343 and the statutory issues raised by appellees' claim against Philbrook were indistinguishable from those raised by their claim against the Secretary. Thus the only practical difference that resulted from the District Court's assumption of jurisdiction over the Secretary was that its injunction was directed against him as well as against appellant Philbrook. But the Secretary has announced, in his brief to this Court, that in the event the decision of the District Court on the statutory issue is affirmed, he intends to comply with it. The exercise of the District

Court's jurisdiction over the Secretary in this case, therefore, has resulted in no adjudication on the merits that could not have been just as properly made without the Secretary, and has resulted in no issuance of process against the Secretary which he has properly contended to be wrongful before this Court.

The Secretary's appeal from the judgment in No. 74-132 is, therefore, dismissed.

It is so ordered.